(23,107)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 218.

GEORGE E. PRIEST, MELVIN W. QUICK, AND CHARLES M. BENJAMIN, APPELLANTS,

vs.

THE BOARD OF TRUSTEES OF THE TOWN OF LAS VEGAS, IN THE COUNTY OF SAN MIGUEL, NEW MEXICO.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO.

INDEX.

	Original.	Print
Caption	1	1
Transcript from the district court of San Miguel county, New Mexico	2	1
Petition for mandamus	2	1
Exhibit A—Decree in Priest *et al. vs.* Teitlebaum *et al.*, No. 4512	7	4
Order to show cause	13	7
Clerk's certificates to order to show cause	15	8
Sheriff's return	16	8
Answer of respondents	18	9
Exhibit A—Record claim No. 20, Town of Las Vegas *vs.* Thomas Baca *et al.*	27	13
Petition	27	13
Grant	31	16
Notice	39	20
Grant	41	21
Report	59	31
Exhibit B—Opinion of Secretary Noble, December 5, 1891	66	35
C—Letter of Acting Secretary to Commissioner General Land Office, December 17, 1898.	87	46

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 17, 1913.

	Original.	Print
Counter-claim of respondents	99	52
Exhibit D—Record in Priest *et al. vs.* Teitlebaum *et al.*	110	58
Complaint	110	58
Affidavit of John D. W. Veeder	116	62
Proof of publication	117	62
Certificate of no appearance	120	64
Decree *pro confesso*	121	65
Motion to strike answer and return	122	65
Order denying motion to strike	124	66
Demurrer to answer and return	125	67
Order overruling demurrer	126	67
Reply to answer and return	128	68
Motion to strike counter-claim	133	71
Order overruling motion to strike	135	72
Demurrer to counter-claim	136	73
Order overruling demurrer	138	74
Answer to counter-claim	139	75
Motion to strike out portions of answer of respondents (not set out)	145	78
Order on motion to strike out	146	79
Reply to answer to counter-claim	147	79
Judgment	151	81
Motion for rehearing	152	81
Order denying motion for rehearing	154	83
Motion for appeal	155	83
Request for leave to sign as sureties on bond	156	84
Order granting appeal, &c.	157	84
Bond on appeal	159	85
Citation	162	87
Judge's certificate to bill of exceptions	165	89
Clerk's certificate to record	165	89
Assignment of errors	166	89
Order of continuance	168	90
Order resetting cause	168	91
Argument and submission	169	91
Judgment	169	92
Motion for rehearing	170	92
Order denying rehearing	173	95
Order fixing amount of bond	174	95
Order as to statement of facts	175	96
Finding of facts	176	96
Order allowing appeal	190	109
Assignment of errors	191	110
Affidavit of value	193	111
Appeal bond	194	112
Præcipe for record	196	113
Opinion	200	116
Clerk's certificate	208	121
Citation and service	209	121
Assignment of errors	210	122

1 Be it Remembered, that heretofore, on towit *on* the thirteenth day of July, A. D., 1910, there was filed in the office of the Clerk of the Supreme Court of the Territory of New Mexico, a transcript of record, in a certain cause therein pending, entitled, Ex-Parte George E. Priest, Melvin W. Quick and Charles M. Benjamin, (Relators) Appellants, vs. Board of Trustees of the Town of Las Vegas, (Respondents,) Appellees, and numbered 1342, portions of which said transcript of record, were and are in the following words and figures towit:—

2 Be it Remembered, That heretofore towit, on the 4th day of September, A. D. 1906, there was filed in the office of the Clerk for the District Court, sitting within and for the county of San Miguel, for the trial of causes arising under the laws of the Territory of New Mexico, a petition for mandamus, which said petition is in words and figures as follows,—towit:—

Petition for Mandamus.

TERRITORY OF NEW MEXICO,
County of San Miguel, ss:

To the Honorable District Court, within and for the County of San Miguel, and Territory Aforesaid.

No. 6220.

Ex Parte GEORGE E. PRIEST, MELVIN W. QUICK, and CHARLES M. BENJAMIN.

Petition for Mandamus to the Board of Trustees of the Town of Las Vegas.

Your petitioners, George E. Priest, Melvin W. Quick and Charles M. Benjamin, respectfully represent and show to the court that they are residents of Ithaca, in the State of New York, and the owners in fee simple and hold a perfect title to the following described tract of land and real estate, lying and being situate within
3 the county of San Miguel and Territory of New Mexico and within the exterior boundaries of that certain grant of land, commonly known as "The Las Vegas Land Grant," and better and more particularly described as follows:—

Beginning at a point on the East Bank of the Arroyo Pecos, nineteen and seventeen hundredths (19 & 17/100) chains west of the southeast corner of Section twenty-three (23) in Township sixteen (16) north of Range sixteen (16) east, said point being marked with a blue lime-stone rock, six inches by six inches by eighteen inches (6″ x 6″ x 18″) set in the ground and with a small triangle

cut on the top; running thence south three (3) degrees and forty (40) minutes west, 5.93 chains;

Thence South fifty-two (52) degrees East, 36.50 chains;

Thence South thirty-three (33) degrees East, 21.90 chains:

Thence South twenty-six (26) degrees East, 36.46 chains;

Thence South 58 degrees East, 12 chains;

Thence South 48 degrees and 30 minutes East, 10.70 chains;

Thence East 66 chains;

Thence North 212.18 chains;

Thence West 155.16 chains, more or less, to the Arroyo Pecos;

Thence following the Arroyo Pecos to the place of beginning, by the following meanderings:—

South thirty-four (34) degrees and fifteen (15) minutes west, 20 chains;

Thence South seven (7) degrees West, 18 chains;

Thence South five (5) degrees and fifteen (15) minutes East, 8 chains;

Thence South eight (8) degrees West, 5.57 chains to the place of beginning.

That your petitioners acquired the title to the said tract of land between the fourth day of October 1888, and the first day of July 1894, by purchase from the then owners and occupants of the several portions comprising said tract of land and obtained deeds of conveyance therefor, and afterwards, on the 19th day of July, 1894, instituted proceedings in the District Court of San Miguel County against John H. Teitlebaum and Lena J. Teitlebaum, his wife, Adolph Teitlebaum, the Fairview Town Company, the unknown successors in interest and unknown assigns of the said Fairview Town Company, James J. Fitzgerald and Maria E. Fitzgerald, his wife, and all the unknown claimants of interests in the lands and premises herein described adverse to these petitioners, to quiet and forever set at rest the title to the said tract of land, and that on September 15th, 1894, following, a decree was duly entered in said cause, thereby confirming and establishing in your petitioners an estate in fee simple, absolute, against any and all and every adverse claim of all persons, whomsoever, and forever quieting and setting at rest the title to the said tract of land against these respondents, as will more fully appear from a true and correct copy of the said decree, hereto attached and made a part hereof and marked "Exhibit A."

That your petitioners further show that the tract of land, known as The Las Vegas Land Grant, was confirmed by Act of Congress on June 21st, 1860, to the town of Las Vegas, and became and was by virtue of the said original grant, made by the Mexican Government and confirmation by Act of Congress of the United States, to the extent of said Grant, segregated from the Public Domain and became and was at the date of the said decree and long prior thereto, towit: the date of said confirmation, the private property of the grantee and its privies.

Your petitioners further show to the court that Jefferson Raynolds, Eugenio Romero, Charles Ilfeld, Elisha V. Long, Isidor V.

Gallegos, Felix Esquibel and F. H. Pierce, are the Trustees of the said, The Las Vegas Land Grant, duly appointed by this Honorable Court, and that under and by virtue of an Act of the Legislative Assembly of the Territory of New Mexico, entitled,—"An Act to Provide for the Management of the Las Vegas Grant, and for other purposes," Approved March 12th, 1903, it was thereby made the duty of said Board of Trustees of said "The Las Vegas Land Grant," known and designated as the "Board of Trustees of the Town of Las Vegas," to make, execute and deliver deeds of conveyance to any and all persons who hold a title to any lands of the Las Vegas Land Grant, which became or was perfect or entitled then to the possession thereof at the time of the acquisition of New Mexico, under the treaty of Guadalupe Hidalgo, or at any other time subsequent thereto.

Your petitioners further show, that in consequence of the appointment of the said mentioned Board of Trustees of the Town of Las Vegas and in pursuance of the said Act of the Legislative Assembly of New Mexico above referred to, they, on the — day of June A. D. 1906, made application to said Board to make, execute and deliver to them a deed of conveyance for the said mentioned tract of land, the title to which had been perfected by virtue
6 of the decree of this Honorable Court as hereinbefore specified, and that said Board, notwithstanding it was their imperative duty under the said Act to do so, declined to recognize the title of your petitioners to the tract of land in question and to issue the deed of conveyance asked for.

Wherefore, inasmuch as the said Board of Trustees of the Town of Las Vegas has refused said application of your petitioners and declined to recognize the title of your petitioners to the said tract of land and likewise declined to issue to them the deed of conveyance asked for and as the law provides no other adequate remedy in the premises, whereby your petitioners can procure the said deed of conveyance whereof they are illegally and unjustifiably deprived, your petitioners pray that the Writ of Mandamus may be issued and directed to the said Board of Trustees of the Town of Las Vegas, and to the said Jefferson Raynolds, Eugenio Romero, Charles Ilfeld, Elisha V. Long, Isidor V. Gallegos, Felix Esquibel, and F. H. Pierce, the persons constituting said Board of Trustees of the Town of Las Vegas and each of them severally, commanding them to make, execute and deliver the deed of conveyance asked for and directed by said Act of the Legislative Assembly to be given, and that such other order may be had in the premises as justice may require.

GEORGE E. PRIEST,
MELVIN W. QUICK,
CHARLES M. BENJAMIN,
Petitioners.

VEEDER & VEEDER,
Of Las Vegas, N. M., Attorneys for Petitioners.

7 TERRITORY OF NEW MEXICO,
County of San Miguel, ss:

John D. W. Veeder, being duly sworn, upon his oath deposes and says: That he is one of the attorneys for petitioners in the above entitled cause, and that the several matters and things in the foregoing petition stated are true in substance and in fact.

JOHN D. W. VEEDER.

Subscribed and sworn to before me this 1st day of September, A. D. 1905.

[N. P. SEAL.] NELLIE F. WITHROW,
Notary Public.

"EXHIBIT A."

In the District Court of the Fourth Judicial District Territory of New Mexico, County of San Miguel.

No. 4512.

GEORGE E. PRIEST et al.
VS.
JOHN H. TEITLEBAUM et als.

This cause coming on for final hearing before the Judge of said Court at Chambers in Las Vegas, New Mexico, upon the bill of complaint taken as confessed against all and each of the defendants, and upon the testimony offered by the said complainants in support of the bill of complaint; and upon due consideration of the bill of complaint and the testimony offered by complainants in sup-
8 port thereof, and after hearing J. D. W. Veeder, Esq., solicitor for the complainants, the court being now fully advised in the premises, doth find as follows:—

First. That each and all of the allegations made by the complainants in their bill of complaint are true.

Second. That all the defendants to the said cause both known and unknown, and all persons who may have or claim any interest or title to the lands and premises set out and described in the bill of complaint, and hereinafter described, have been brought before the court by the proper process and are each and all properly made defendants to said bill of complaint, and that the service upon each and all of the parties defendant in said cause is in all respects and particulars in conformity to law, and that the court has jurisdiction of each and all of the said defendants, whether known or unknown, and has jurisdiction of the subject matter of this suit.

Third. That the lands and real estate set out and described in the bill of complaint and hereinafter described, are a portion of and lie within the alleged exterior boundaries of that certain other and larger tract and grant of land, commonly known as "The Las Vegas Grant," which grant was made by the Government of Mexico in the

year A. D. 1835, and was confirmed by an Act of the Congress of the United States, approved June 1st, 1860, and that said tract of land in consequence of said grant by the Mexican Government and confirmation by the Act of Congress of the United States was to the extent of said grant, as the same may be determined, segregated
9 from the public domain and became and is the private property of the grantees and their privies.

Fourth. That the complainants, George E. Priest, Melvin W. Quick and Charles M. Benjamin, and their grantors, through whom they claim title and from whom they have deeds of conveyance purporting to convey an estate in fee simple, are now, and for more than ten years next preceding the commencement of this suit have been in the actual, exclusive, open, notorious, uninterrupted and adverse possession and occupation of the following described tract of land and premises and each and every part thereof, claiming to be the owners thereof, and under claim of title thereto; towit:—

That certain tract of land, situate, lying and being in the county of San Miguel and Territory of New Mexico, and bounded and described as follows:—

Beginning at a point on the east bank of the Arroyo Pecos, nineteen and seventeen hundredths (19 & 17/100) claims west of the southeast corner of section twenty-three (23), in Township sixteen (16) north of Range sixteen (16) east; said point being marked with a blue lime-stone rock, six inches by six inches by eighteen inches (6″ x 6″ x 18″) set in the ground and with a small triangle cut on the top, running thence south three (3) degrees and forty (40) minutes west 5.93 chains;

Thence South fifty-two (52) degrees East, 36.50 chains;

Thence South 33 degrees East, 21.90 chains;

Thence South 26 degrees East, 37.46 chains;

Thence South 58 degrees East, 12 chains;

10 Thence South 48 degrees and 30 minutes East, 10.70 chains;

Thence East 66 chains;

Thence North 212.18 chains;

Thence West 155.16 chains, more or less, to the Arroyo Pecos;

Thence following the Arroyo Pecos to the place of beginning by the following meanderings:—

South 34 degrees and 15 minutes West, 20 chains;

Thence South seven (7) degrees West, 18 chains;

Thence South five (5) degrees and 15 minutes East, 8 chains;

Thence South eight (8) degrees West 5.57 chains to the place of beginning;

And that in consequence of such open, actual, exclusive, notorious, uninterrupted and adverse possession of the said tract of land and each and every part thereof, for more than said period of ten years, next preceding the bringing of this suit, under claim of ownership and title thereto, the said complainants are entitled to the relief prayed for in their bill of complaint, and are entitled to hold and possess the said tract of land and each and every part thereof in fee

simple title, free from any and all claim, trouble, hindrance or obstruction on the part of any person whatsoever.

It is accordingly ordered, adjudged and decreed by the court:—

That the estate, right, title and interest of the complainants, and each of them, in and to the said tract of land and real estate, to-wit:—

That certain tract of land, situate, lying and being in the
11 county of San Miguel and Territory of New Mexico, and bounded and described as follows:—

Beginning at a point on the East Bank of the Arroyo Pecos, nineteen and seventeen hundredths (19 & 17/100) chains west of the southeast corner of Section twenty-three (23), in Township sixteen (16) north of Range sixteen (16) east, said point being marked with a blue limestone rock, six inches by six inches by eighteen inches (6″ x 6″ x 18″) set in the ground and with a small triangle cut on the top, running thence south three (3) degrees and forty (40) minutes west, 5.93 chains;

Thence South fifty-two (52) degrees East, 36.50 chains;

Thence South thirty-three (33) degrees East, 21.90 chains;

Thence South twenty-six (26) degrees East, 37.46 chains;

Thence South fifty-eight (58) degrees East, 12 chains;

Thence South forty-eight (48) degrees and thirty (30) minutes East, 10.70 chains;

Thence East sixty-six chains;

Thence North two hundred and twelve and eighteen hundredths (212 & 18/100) chains;

Thence West one hundred and fifty-five and sixteen hundredths (155 & 16/100) chains, more or less, to the Arroyo Pecos;

Thence following the Arroyo Pecos to the place of beginning by the following meanderings:—

South thirty-four (34) degrees and fifteen (15) minutes, West, 20 chains;

Thence South seven (7) degrees West, 18 chains;

12 Thence South five (5) degrees and fifteen (15) minutes East, 8 chains; thence South eight (8) degrees West, five and fifty-seven hundredths (5 & 57/100) chains to the place of beginning.

Is an estate in fee simple absolute, and the same is hereby confirmed and established in the complainants, and each of them, against any and all and every adverse claim of the said defendants or any of them, or of any person whatsoever, and the said defendants are, and each of them hereby is forever barred and estopped from having or claiming or asserting any right, title or interest or claim whatsoever in and to the said tract and parcel of land and real estate, or any portion thereof, adverse to the said complainants or any of them, and the title of the said complainants and each of them in and to the above described tract of land and real estate, and each and every part thereof, is hereby forever quieted and set at rest.

THOMAS SMITH,
Chief Justice, etc.

Dated at Las Vegas, N. M., September 15th, A. D. 1894.

(Endorsed:) No. 6220. District Court, San Miguel County. Ex-Parte George E. Priest, Melvin W. Quick and Charles M. Benjamin. Petition for Mandamus. Messrs. Veeder and Veeder of Las
13 Vegas, N. M., Att'ys for Relators. Filed in my office Sept. 4, 1906, Secundio Romero, Clerk.

And Afterwards, towit: on September 4th, 1906, there was filed in said clerk's office an order to show cause, etc., in words and figures as follows, towit: (Rec. N. page 168).

TERRITORY OF NEW MEXICO,
County of San Miguel, ss:

In the District Court within and for the County of San Miguel and Territory Aforesaid. In Vacation.

EX PARTE GEORGE E. PRIEST, MELVIN W. QUICK, and CHARLES M. BENJAMIN.

Petition for Mandamus to the Board of Trustees of the Town of Las Vegas.

Order to Show Cause Why a Mandamus Should Not Issue.

On Reading and Filing the information and petition of the Relators, and on motion of Messrs. Veeder and Veeder, counsel
14 for the said Relators: It is ordered that the Board of Trustees of the Town of Las Vegas in said petition and information named, and Jefferson Raynolds, Eugenio Romero, Charles Ilfeld, Elisha V. Long, Isidor V. Gallegos, Felix Esquibel, and F. H. Pierce, the persons constituting said board and each of them, show cause before the Honorable District Court of San Miguel County, on the 10th day of October, A. D. 1906, at Las Vegas, N. M., at ten o'clock A. M., why they should not be compelled forthwith to issue to the said Relators the deed of conveyance applied for by them to the lands within the exterior boundaries of the Las Vegas Grant as particularly described in the said petition and information, a copy of which is hereto attached, or why a writ of mandamus should not issue, directed to them and each of them to do the act above stated.

And it is also ordered, that a copy of this order, with a copy of the said petition and information on which the same is founded be served on the said Board of Trustees of the Town of Las Vegas and Jefferson Raynolds, Eugenio Romero, Charles Ilfeld, Elisha V. Long, Isidor V. Gallegos, Felix Esquibel and F. H. Pierce, the members of said board 20 days before the time above mentioned.

Dated, Las Vegas, N. M., Sept. 3rd, 1906.

WILLIAM J. MILLS,
Chief Justice, etc.

And Afterwards, towit, on September 4th, 1906, there was issued out of said clerk's office a true copy of the petition and or-
15 der to show cause, as above set forth and as appears by the certificate of the clerk of said court.

TERRITORY OF NEW MEXICO,
County of San Miguel, ss:

No. 6220.

EX PARTE GEORGE E. PRIEST, MELVIN W. QUICK, and CHARLES M. BENJAMIN.

I, Secundio Romero, Clerk of the Fourth Judicial District of said Territory, and ex-officio clerk of said District Court, sitting within and for the county of San Miguel, certify that the foregoing to which his certificate is attached is a true copy of the petition filed in the above entitled cause.

Witness my hand and the seal of said court this 4th day of Sept., 1906.

[SEAL.] SECUNDIO ROMERO, *Clerk.*

TERRITORY OF NEW MEXICO,
County of San Miguel, ss:

EX PARTE GEORGE E. PRIEST, MELVIN W. QUICK, and CHARLES M. BENJAMIN.

I, Secundio Romero, Clerk of the Fourth Judicial District of said Territory and ex-officio Clerk of said District Court, sitting within and for the county of San Miguel, certify that the foregoing
16 to which this certificate is attached is a true copy of the order to show cause in the above entitled cause.

Witness my hand and the seal of said Court this 4th day of Sept., 1906.

[SEAL.] SECUNDIO ROMERO, *Clerk.*

And Afterwards, towit: On November 12th, 1906, said writ was returned, served and filed, with service of sheriff endorsed thereon, in words and figures as follows, to-wit:

TERRITORY OF NEW MEXICO,
County of San Miguel, ss:

No. 6220.

EX PARTE GEORGE E. PRIEST, MELVIN W. QUICK, and CHARLES M. BENJAMIN.

I, the undersigned, Sheriff of the County of San Miguel, do hereby certify that I served a true copy of the annexed petition and order of the court upon Elisha V. Long, Jefferson Raynolds, Eugenio Romero, F. H. Pierce, and Isidor V. Gallegos, the 1st two on the 4th day of September A. D. 1906, and the last three on the 7th day of September A. D. 1906, by then and there delivering to each of them personally a true copy of the said petition and order.

I further certify that I served a true copy of the annexed petition and order of the court upon Felix Esquibel, on the 22nd day of October, A. D. 1906, by then and there delivering to him personally a true copy of the petition and order.

17 I further certify that I made no service upon Charles Ilfeld, for the reason that he could not be found within the limits of the County of San Miguel, and I am advised that he is not at present within the United States.

Done at Las Vegas, in the County of San Miguel, this 9th day of November, A. D. 1906.

CLEOFES ROMERO,
Sheriff of San Miguel County.

18 And Afterwards, towit, on January 29th, 1907, there was filed in said clerk's office the answer of the Respondents to Relators' petition, which said answer is in words and figures as follows, towit:

Answer of Respondents.

TERRITORY OF NEW MEXICO,
County of San Miguel, ss:

In the District Court.

No. 6220.

Ex Parte GEORGE E. PRIEST et als.

Comes now the Board of Trustees of the Town of Las Vegas, and the said several trustees in the petition mentioned, respondents in the above entitled cause, and for answer to the petition in said cause, state:

1. That they deny that petitioners are the owners in fee simple or hold a perfect title to the tract of land in said petition described, or any part thereof.

19 2. That they deny that the petitioners acquired title to said tract of land between the fourth day of October, 1888, and the first day of July, 1894, by purchase from the then owners or occupants thereof, and deny that the petitioners at any time or in any manner ever acquired title thereto.

3. That they admit that petitioners instituted proceedings to quiet title to said land, at the date and time in the petition averred but deny that any decree was at any time duly entered in said cause, confirming and establishing the petitioners an estate in fee simple, absolute against any and all and every adverse claim of all persons whomsoever, and deny that the effect of the decree in said cause in the petition mentioned, was or is to confirm or establish in the petitioners any estate in the said land whatever, as against the Town of Las Vegas or these respondents; and deny that any decree in said cause was entered, forever quieting and setting at rest the title to the

said tract of land as against the said Town of Las Vegas, or as against these respondents, and deny that the effect of said Exhibit "A" was or is in any way to establish the title to the said land and real estate in the petitioners or to quiet and establish the said title as against the said Town of Las Vegas or these respondents, or to create any estate or title to said land or any part thereof in the petitioner as against the said Town of Las Vegas or these respondents.

4. That the said land and real estate in petitioners' complaint described is a part and portion of that certain tract of land and real estate known and called the Las Vegas Grant.

20 5. That in the year 1858, one William Pelham, then the Surveyor General of the Territory of New Mexico, acting under a certain petition then presented to him on behalf of the heirs at law of one Luis Maria Cabeza de Baca, and a petition of certain residents of the Town of Las Vegas, investigated and examined into said Las Vegas Grant; and thereafter on the 18th day of December, 1858, made and caused to be forwarded to the Commissioner of the General Land Office, his report and findings as to the said Las Vegas Grant.

6. That at the time of the making of said report the said Surveyor General also forwarded to the Commissioner of the General Land Office of the United States, all of the said petitions, grant papers, reports of various officers of the Republic of Mexico, and all other documents introduced before him, and testimony taken by him in reference to said grant,—copies of which said petitions, documents, grants and testimony, together with a copy of said report and finding of said Surveyor General, are attached thereto, marked "Exhibit A," and made a part hereof as fully and to the same effect as though herein set out.

7. That the said report of said Surveyor General and all of the documents and testimony aforesaid, were thereafter transferred to the Congress of the United States, and on the 21st day of June, 1860, the Congress of the United States passed a certain act entitled: "An act to confirm certain private land claims in the Territory of New Mexico," which said act appears as chapter 167 of Volume 12 of the United States Statutes at large, and is hereby referred to.

21 8. That thereafter, on July 26, 1860, instructions were issued by the Land Department to the Surveyor General of New Mexico, in which the latter was directed to make a survey of the Las Vegas Grant and determine the area thereof, and to furnish the Baca claimants with a certificate of this right and the area they were to select in five separate parcels, their total area to be equal in quantity to the area of the town tract.

9. That in 1861 a survey, known as the Pelham Survey, was made of said Grant pursuant to said instructions by the Surveyor General of New Mexico, and approved by him, but not by the Commissioner of the General Land Office or the Secretary of the Interior, and the area thus determined to be 496,446.96 acres, for which area a certificate was issued to the Baca claimants, and this area of land was duly located by them in five separate square parcels and such locations

duly approved by the proper officers of the Government, whereby the claim of the heirs of Luis Maria Cabeza de Baca to the said tract of land within said Las Vegas Grant, became extinguished and at an end.

10. That territorial maps issued by the Government after said survey, had the Las Vegas Grant located upon them according to said survey, as a confirmed grant.

11. That on the 22nd day of March, A. D. 1887, George W. Julian, the then Surveyor General of the Territory of New Mexico, by an official communication addressed to the Commissioner of the General Land Office of the United States, expressed his opinion that the said grant could not legitimately embrace more than
22 twenty thousand acres, and urged that a re-survey of the same be ordered; and on the 5th day of November, A. D. 1887, a re-survey thereof was ordered to be made, by the Commissioner of the General Land Office, in accordance with the recommendations of said Surveyor General.

12. That the said Surveyor General proceeded to make the re-survey aforesaid, but the same was never completed, as shown by recitals of "Exhibit C" hereto attached. That said survey was extended over that portion of the Las Vegas Grant which embraced the land described in the petition in this action, and the lands in the vicinity thereof, and by said survey said lands described in the petition in this action were excluded from the said Las Vegas Grant and left as the public domain of the United States.

13. That on the 1st day of February, 1890, Edward F. Hobart, then Surveyor General of the Territory of New Mexico, in a communication to the Commissioner of the General Land Office of the United States, reviewed the recommendations aforesaid, expressed disapproved of the same and recommended that a patent be issued to the Town of Las Vegas according to the said survey of the year 1861, being what is known as the Pelham survey.

14. That thereupon John W. Noble, the then Secretary of the Interior of the United States on the 5th day of December, 1891, by an order and opinion in writing, ordered that a re-survey of said grant should be made in accordance with the recommendations of the said George W. Julian;—a copy of which said opinion is hereto
23 attached, marked "Exhibit B" and made a part hereof, as fully and to the same effect as though herein set out.

15. That thereafter, certain persons claiming to act for and on behalf of said Town of Las Vegas, petitioned for a review and reversal of the said ruling of the Department of the Interior, and on the 16th day of May, 1894, Hoke Smith, the then Secretary of the Interior of the United States, denied the said petition and ordered the issuance of a patent in accordance with the said decision of said John W. Noble, of December 5th, 1891.

16. That on the 17th day of December, 1898, Thos. E. Ryan, then the acting Secretary of the Interior of the United States, by his written opinion and order to the Commissioner of the General Land Office of the United States, revoked and set aside said decision and order of said John W. Noble, and directed the said Commissioner

of the General Land Office to take such action as might be necessary to the issuance of a patent to the Town of Las Vegas, for the full quantity of land embraced within the boundaries set forth in the original petition for the making of the Las Vegas Grant hereinbefore referred to,—a copy of which said decision and order is hereto attached, marked "Exhibit C," hereby referred to and made a part hereof, as fully and to the same effect as though herein set out in full.

17. That in the year 1890 one P. Milhiser, for himself and for other persons claiming to be the grantees of the Las Vegas Grant, filed a petition with the Commissioner of the General Land Office, asking that a patent to the said Las Vegas Grant be issued to them or to their predecessors in interest, and thence continuously until the 6th day of January, 1902, proceedings were being taken, claims presented before the Secretary of the Interior of the United States, and litigation instituted and carried on in the District and Supreme Courts of the District of Columbia, and in the Supreme Court of the United States, and other courts, between said P. Milhiser and his associates, and persons claiming to represent the said Town of Las Vegas, and the Secretary of the Interior and Commissioner of the General Land Office, for the purpose of enjoining further prosecution of survey in accordance with the decisions aforesaid of Secretary Noble and Secretary Smith; to have said decisions vacated and annulled and to determine to whom the patent should issue for said grant,—until, on said last mentioned date the Supreme Court of the United States decided that a patent to the grant aforesaid should be issued in the name of the Town of Las Vegas as confirmee and grantee thereof.

18. That in the years 1889 and 1900 the Commissioner of the General Land Office of the United States, caused a re-survey of the said Las Vegas Grant to be made by one Frank M. Johnson, by which survey the area of said Las Vegas Grant was determined to be 431,653.65 acres, upon which the patent hereinafter mentioned was issued.

19. That each of the several surveys fixed different exterior lines as the outlying boundaries of the said grant.

20. That on the 27th day of June, 1903, a patent for said tract of land, in accordance with the said survey of Frank M. Johnson, was duly issued by the United States of America, to the said Town of Las Vegas, which said patent is recorded in book 54, page 351 of the Records of Deeds of San Miguel County, New Mexico, to which said patent and the record thereof reference is hereby made.

21. That at the time of the institution and carrying on of the suit to quiet title in the petition in this cause described, and at the time of the rendition of the decree in said petition set out, the plaintiffs in said action to quiet title and their representatives in said suit to quiet title, well knew all of the facts hereinbefore alleged, as to the confirmation of the said Las Vegas Grant, the various decisions of the officers of the United States in reference thereto, the litigation in regard thereto, and the Pelham and partial Julian sur-

veys aforesaid, which occurred prior to the institution of said suit to quiet title, as hereinbefore set out,—and well knew that the Town of Las Vegas was then the owner and claimed to be the owner of said tract of land known as the Las Vegas Grant, including the said tract of land in the petition in this action described.

22. That said Town of Las Vegas, either at the date of said confirmation, or at any time subsequent thereto, had no legal representative upon whom legal process could be served, until the — day of ——, 1902, when the Board of Trustees of the Town of Las Vegas, respondents herein, was appointed.

23. That neither respondents nor said Town of Las Vegas was a party to said suit to quiet title in the petition in this action set out, and in said suit no process was issued against, nor was any served upon said Town of Las Vegas or the respondents herein.

26 24. That the respondents herein, the Board of Trustees of the Town of Las Vegas, consisting of the said individual trustees, are the representatives of the Town of Las Vegas, confirmee and patentee of said Las Vegas Grant, as aforesaid, and are vested with the control and management of all the land aofresaid, and as the representatives of said town, subject to the directions of the said District Court aforesaid, have the control of said Grant, as hereinbefore averred.

25. And the said Jefferson Raynolds, Eugenio Romero, Charles Ilfeld, Elisha V. Long, Isidor V. Gallegos, Felix Esquibel and F. H. Pierce, aver that they have no personal or individual interest in the lands in the petition described, and that the only interest they have in said lands or duty with reference thereto, is as members of the Board of Trustees of the Town of Las Vegas, mentioned in the said petition, acting as such trustees in the management and control of the said Las Vegas Grant under the direction of the District Court, in manner and form aforesaid.

Wherefore, respondents ask to be hence dismissed with their costs.

THE BOARD OF TRUSTEES OF THE TOWN OF LAS VEGAS AND THE INDIVIDUAL MEMBERS THEREOF,
By JEFFERSON RAYNOLDS, *President.*

Messrs. Jones & Rogers, E. V. Long, Chas. A. Spiess, S. B. Davis, Jr., and Louis C. Ilfeld, Las Vegas, New Mexico, Att'ys for Respondents.

27 TERRITORY OF NEW MEXICO,
County of San Miguel, ss:

Jefferson Raynolds, being first duly sworn, deposes and says: that he is the President of the Board of Trustees of the Town of Las Vegas, as respondent in the above entitled cause; that he has read the above and foregoing answer by him subscribed and knows the contents thereof, and that the same is true of his own knowledge.

JEFFERSON RAYNOLDS.

Subscribed and sworn to before me this 12th day of January, 1907.

[SEAL.] EDW. J. McWENIE,
Notary Public.

EXHIBIT "A."

Claim No. 20.

Town of Las Vegas—Thomas Baca et al.

Notice.

TERRITORY OF NEW MEXICO,
County of Santa Fe, ss:

To the Hon. William Pelham, Surveyor General of the Territory of New Mexico, under the Act of Congress Approved July 22, A. D. 1854:

Your petitioners, the surviving heirs-at-law of one Luis Cabeza de Baca, deceased, would respectfully state, that on the 16th
28 day of January, 1821, the provincial deputation of the State of Durango granted to the ancestor of your petitioners, Luis Cabeza de Baca, a tract of land called the "Las Vegas Grandes," and which said grant was afterwards ratified by the provincial deputation of New Mexico, and which said grant has for its boundaries the following landmarks, towit:

On the north the Chapellote river; on the south the boundary of San Miguel del Bado; on the east the Aguage de la Llegua and the boundary of Antonio Oritz, and on the west the summit of the Pecos mountains, all of which will more fully appear by reference to the said grant now on file in the office of the Surveyor General, No. 137, and the Grant of Antonio Oritz, No. 727, and the Grant to San Miguel del Bado, No. 125, to all of which reference is hereby made.

Your petitioners further state that said lands, marks, and boundaries are well known and easily discovered, but inasmuch as no survey of said lands has as yet ever been made, the quantity of land included within said boundaries is unknown to your petitioners.

Your petitioners further state that it will appear by reference to said grant that it was made to the said Luis Cabeza de Baca and his male children, and invested him and his male children with an absolute title to said lands.

Your petitioners further state that the said Luis Cabeza de Baca and his male children took possession of said lands under said grant, built a ranch upon said lands, and with their servants and stock, consisting of about six hundred mules and horses, continued to use, occupy and possess the lands aforesaid, and after sev-
29 eral years' peaceable and quiet occupancy of said lands they were driven away from them by the hostilities of the Indians, and the said six hundred mules and horses, to the value of thirty-six thousand dollars, were taken away by the said hostile Indians. Your

petitioners further state that hostilities continued to exist upon the part of the Indians, so that said lands could not be occupied by them until about the year 1835, at which time a grant was made by the provincial deputation of New Mexico to Juan de Dios Maese, Miguel Archuleta, Manuel Duran, and twenty-five others, extending to any others desiring to settle within the grant to the lands of your petitioners, as will more fully appear by reference to said grant now on file in the office of the Surveyor General, and No. 12 on the Docket Book.

Your petitioners further state that at the time said grant was made by the provincial deputation of New Mexico to the said Juan de Dios Maese and others, the said deputation and said Juan de Dios and other grantees, well knew that said lands of right belonged to and were the lands of your petitioners under the previous grant of the State of Durango, confirmed and ratified by the provincial deputation of New Mexico, by means whereof the said grant is fraudulent and void, and the said Juan de Dios Maese and others acquired no title to said lands under said grant, and the said lands still rightfully belong to your petitioners.

Your petitioners further state that said lands are situated in the County of San Miguel, in the Territory of New Mexico. Your petitioners further state that said Luis Cabeza de Baca has long
30 since departed this life, and the only male children of the said Luis Cabeza de Baca, now living are the following, towit: Luis Baca, Prudencio Baca, Jesus Baca the 1st, Felipe Baca, Jesus Baca the 2nd, Domingo Baca, and Manuel Baca. Your petitioners further state that the following sons of Luis Cabeza are dead, towit: Juan Antonio Baca, Jose Baca, Jose Miguel Baca, Ramon Baca, and Matio Baca; and, at the time of their decease, they left the following children and heirs-at-law then surviving, towit: Juan Antonio Baca left surviving him the following children: Jesus Maria Baca, Francisco Thomas Baca, Incarnacion Baca, Nicolas Baca, Jose Baca, Josefa Baca, Guadalupe Baca, Altagracia Baca, Tomas Baca and Trinidad Baca.

Jose Baca left him surviving the following children: Antonio Baca, Felipe Baca, Jose Maria Baca, Francisco Baca, Fernando Baca and Polonio Baca. Jose Miguel Baca left him surviving the following children, towit: Diego Baca, Quirina Baca, Romaldo Baca, Guadaulupe Baca, Paulina Baca, and Martina Baca. Ramon Baca left him surviving the following child, towit: Ygnacio Baca. Mateo Baca left him surviving the following children, towit: Luis Baca, Alejandro Baca, Juan de Dios Baca, and Martin Baca.

Your petitioners further state that the foregoing list contains all the surviving heirs of the said Luis Cabeza de Baca, deceased, known to your petitioners, and they are all residents of the Territory of New Mexico. Your petitioners further state that the infancy of said heirs, the internal revolutions of the Republic of Mexico, the war with the United States, and the acquisition of this Territory by the United States, have hitherto prevented them from regain-
31 ing possession of said lands thus wrongfully taken from them.

Your petitioners therefore ask that their title be investigated, and that such steps be taken in the premises as will secure to them the benefits of said grant, and a legal title to the same under the said act of Congress of July 22, 1854. All of which is respectfully submitted.

JOHN S. WATTS,
Attorney for Petitioners.

SURVEYOR GENERAL'S OFFICE,
SANTA FE, NEW MEXICO, *August* 31, 1859.

The above is a true copy of the original on file in this office.

WM. PELHAM,
Surveyor General.

Grant—Translation.

Secretary's Office of the Most Excellent Territorial Deputation of New Mexico.

I, the undersigned, Secretary of the most excellent territorial deputation of Santa Fe, New Mexico, certify that in the book in which are recorded the proceedings of said most excellent deputation, on the fortieth page of said book, is to be found the action taken on a petition presented by Don Juan Antonio Cabeza de Baca, in the following words literally taken therefrom, viz:

32 MOST EXCELLENT SIR: The citizen, Juan Antonio Cabeza de Baca, in the name of his father, Don Luis Maria, in the best form and most approved manner represents to your Excellency that on the 16th day of January, 1821, my said father presented to the Most Excellent Provincial Deputation of Durango the petition herewith presented, and it was therefore ordered by that body that the communication addressed by the present political chief to the Justice of the Peace of El Bado, which is herewith presented, be concurred in.

These legal steps together with those taken by the political chief in his communication addressed to the Justice of El Bado have caused my father to believe that the lands commonly called Las Vegas Grandes are his property, and consequently should not be granted away, at the same time calling your Excellency's attention to the fact that said lands have been occupied with our stock, and my father has consequently been considered its proper owner.

Further, if the fact of my father not being able to produce the documents of possession will be any cause for not recognising said land as his, I pray your Excellency to take into consideration that my father is not to be blamed in this matter, as he has never ceased to present his claim; on the contrary, it should be preferred to all others, not only on account of the length of time which he has held it, but also for having taken the steps necessary to complete his perfect title thereto.

Therefore I pray your Excellency to cause the proper title deed

to be issued in favor of my aforesaid father, with all the
33 necessary requisites being in justice due to him.
Santa Fe, February 16, 1825.

JUAN ANTONIO CABEZA DE BACA.

Don Luis Maria Cabeza de Baca, resident of the Province of New Mexico, for himself and in the name of seventeen male children, appears before the Supreme Tribunal of the Deputation of the Province of New Mexico, to whom corresponds the distribution and marking out of the unclaimed public lands, and states that a certain tract of land suitable for cultivation and pasturage, called the Vegas Grandes, on the Gallinas river, in the jurisdiction of El Bado, being in the above condition and not having sufficient room, and being very much confined, I suffer a great many injuries; therefore I pray that the aforesaid tract of land be granted to me for the purposes above mentioned, in order that I may with convenience cultivate the soil and advance the interests of agriculture, pasture the animals Providence has been pleased to favor me with, and live in the quietude and repose I aspire to.

This same petition was presented to the government of this province, and in a decree of the 18th of February last, the grant was made to me in company with eight citizens of El Bado. These persons having other grants take no interest in this grant. I therefore, with my said children, renew my application under the protection of the wise and beneficent laws of the sovereign cortes. I therefore pray the supreme tribunal, to whose jurisdiction belongs the conferring of this grant, to donate it to me, with the following boundaries, which are: on the north the Chapellote river, on the south
the boundary of El Bado, on the west the summit of the
34 Pecos mountain, on the east the Aguage de la Llegua and
the boundary of Don Antonio Cortiz—a benefaction which I expect from the liberality of the aforesaid supreme tribunal.
New Mexico, January 16, 1821.

LUIS MARIA CABEZA DE BACA. [RUBRIC.]

In view of the petition presented by Don Luis Maria Cabeza de Baca to the most excellent provincial deputation of Durango on the 16th day of January, 1821, this province being subordinate to that corporation, and the report made by His Excellency, the Governor, Colonel Fecundo Melgares, touching the contents of said petition, therefore they saw proper to issue an order which is literally as follows: Supposing that the partners of Don Luis Maria Cabeza de Baca have other lands where they can pasture their stock, this deputation has determined to grant unto the second the land commonly called the Vegas Grandes, provided the others have erected no buildings on said land or incurred other expenses, unless they shall agree that the amounts disbursed be refunded to them by the aforesaid Baca, assigning to them a portion equal to that held by them in the Vegas Grandes, in the place to be designated by themselves, of which you are hereby informed, so that you may cause the same to

be complied with and the parties interested to be informed thereof. God preserve you many years.

Durango, May 29, 1821.

(Signed) DIEGO GARCIA CONDE.
MIGUEL DE ZUBIRRIA.

35 To His Excellency the Governor of New Mexico.

And I enclose the same to you in order that in compliance with what has been ordered, you proceed to place the aforesaid Luis Cabeza de Baca in possession, according to the terms set forth in his petition, which is herewith enclosed, the eight citizens included in his first petition having placed no improvements on the aforesaid land, placing immediately after his petition the proceedings had by you in the premises, which will be returned to these archives from whence a certified copy will be given to the party interested.

God preserve you many years.

Santa Fe, October 17, 1823.

BARTOLOME BACA.

Don Manuel Antonio Baca, Justice of El Bado.

Public session of the 16th day of February, 1825, book second of the proceedings of said body, page 40, section 3.

A petition from Don Juan Antonio Cabeza de Baca was read, referring to the grant of lands made to him in one thousand eight hundred and twenty-one by the most excellent provincial deputation of Durango, to which corporation New Mexico was subject at that period. It was resolved that the proper writ be issued, giving a copy thereof to the party interested, and confirming the grant made by said corporation on the date aforesaid; which documents will be presented, as required, to the territorial justice of El Bado, who, having then there the grant made to Don Salvador Montoya, will place the aforesaid Don Luis Maria Cabeza de Baca and
36 male children in possession of the aforesaid land according to the action had in the premises, and which has been granted to the party without injury to any third party.

ANTONIO ORTIZ, *President.*
PEDRO GARCIA.
JOSE FRANCISCO BACA.
JOSE FRANCISCO ORTIZ.
PEDRO BAUTISTA PINO.
MATIAS ORTIZ.

JUAN BAUTISTA VIGIL, *Secretary.*

Santa Fe, February 27, 1825.

A correct copy of the original deposited in the archives of this most excellent deputation of New Mexico, under my charge.

JUAN BAUTISTA VIGIL, *Secretary.*

Fees for the present copy Twenty hard dollars.

VIGIL.

SAN MIGUEL DE BADO, *December* 26, 1825.

Although Don Miguel Baca and Don Mateo Baca appeared before me on the 20th, in the afternoon, asking the restoration of the land granted to Don Luis Maria Cabeza de Baca and children by the most excellent deputation, and not being able to do so on account of having promulgated an order to the citizens of my jurisdiction to commence on the 21st an election for my successor and members of the corporation, and having been so much indisposed on the second day of the election that I suspended said elec-
37 tion until the 3d, and which I terminated on the 5th, my disease having reached its crisis, and was obliged to confess, as will be proven by the messengers of Don Luis Maria Cabeza de Baca, and these having been the reasons for not having complied with the order.

THOMAS SENA,
Constitutional Justice.

Santa Fe, January 13, 1826.

Let it proceed to the constitutional justice of El Bado, to give the possession granted.

NARBONA.

To His Excellency the Commanding General and Governor of This Territory:

The citizen, Luis Maria Cabeza de Baca with the greatest submission and respect appears before you and states: That having applied several times to the justices of El Bado to place me in possession of the tract commonly called Las Vegas Grandes, granted to me by the provincial deputation of Durango in the year 1821, and confirmed by the most excellent deputation of this Territory, as will appear by the documents accompanying this my petition, and contained in five written pages, and the statement of the justice Don Thomas Sena, which will give you the information you may require in your decision, I therefore pray your Excellency that, if I have any right, you will be pleased to direct the justice of the precinct of El Bado to fulfill what has been ordered.

LUIS MARIA CABEZA DE BACA,
Persecuted.

Santa Fe, January 13, 1826.

38 SURVEYOR GENERAL'S OFFICE,
TRANSLATOR'S DEPARTMENT,
SANTA FE, NEW MEXICO, *July* 31, 1859.

The foregoing is a true copy from the original now on file in this office.

WM. PELHAM,
Surveyor General.

39 *Notice.*

UNITED STATES OF AMERICA,
Territory of New Mexico:

To the Hon. William Pelham, Surveyor General of the Territory of New Mexico:

Francisco Lopez and Henry Connelly and Hilario Gonzales, on behalf of themselves and a large number of citizens of the United States, residents of the Town of Las Vegas and its vicinity, in the County of San Miguel, Territory of New Mexico, represent to your Honor that they and the citizens they represent are the claimants and legal owners of a certain tract of land lying and being situate in the County of San Miguel, in the Territory of New Mexico, which said land was granted by the provincial deputation of said Territory in the year A. D. 1835 to Juan de Dios Maese, Miguel Archuleta, and Manuel Duran, and Jose Antonio Casados, in their own behalf and that of twenty-five other inhabitants of said county, which said grant is now filed with this petition, (with leave to refer thereto as often as may be necessary), and the boundaries of said grant are as follows, towit:

Bounded on the north by the Sapello river, on the south by the boundary grant of Don Antonio Ortiz, on the east the Aguage de la Llegua, and on the west the grant of San Miguel del Bado;

and the said claimants under and by virtue of settlements made under said original grant, and in conformity with the terms of said grant. Your petitioners refer to the laws, usages and customs
40 of Mexico in force at the time of the making of said grant, to the Spanish laws and regulations which were declared and recognized by the government of Mexico to be in force and effect. For which power and authority, see Collections of the Decrees and Orders of the Cortes of Spain, published by Mariano Galvan in 1829, page 56, and from page 91 to 101; see also Decrees of Mexico of June 4th and September 18, 1823, pages 123 and 180, 2 vol. Collection of Decrees; see also, Ordenanzas de Tierras y Aguas, page 8; Peters' Reports, 436; I Howard, 24; 15th Peters, 130; 6th Peters, 621; Holcomb's U. S. Digest, pages 358 to 363.

The said claimants cannot show the quantity of land embraced in said grant, except as the same are set forth in the boundaries of said grant, nor can they furnish a plat of survey of said grant, as no survey of the land has ever been executed.

Your petitioners, the claimants, are also informed and believe that Thomas Cabeza de Baca, for himself and others, are claimants also for the lands embraced in said grant and now claimed by your petitioners.

Your petitioners pray that their claim and title to said lands be examined as required by law, and that said grant be confirmed to them; and, as in duty bound, will every pray, &c.

SMITH, HOUGHTON & ASHURTS,
For Petitioners.

SURVEYOR GENERAL'S OFFICE,
SANTA FE, NEW MEXICO, *August* 20, 1859.

The above is a true copy of the original on file in this office.

WM. PELHAM,
Surveyor General.

41 *Grant—Translation.*

Seal Third. [SEAL.] Two Reals.

For the Years One Thousand Eight Hundred and Twenty-six and Eight Hundred and Twenty-seven.

MOST RESPECTFUL CORPORATION: The citizens, Juan de Dios Maese, Miguel Archuleta, Manuel Duran, and Jose Antonio Casaos, for themselves and in the name of twenty-five men, appear before your honorable body in the best and most approved manner, and according to law, and state that having registered a vacant and uncultivated piece of land, commonly known by the name of Las Vegas, on the Gallinas river, about five leagues distant from this settlement, which land we solicit for the purpose of planting a moderate crop, to have also the necessary land for pasture and watering places, and having the following boundaries: on the north the Sapello river; on the south the boundary of the grant made to Don Antonio Ortiz, on the east the Aguage de la Zegua, and on the west the boundary of the grant to San Miguel del Bado, which grant we pray for without injury to any third party, binding ourselves to receive possession in the name of the federation, and to comply with the reasonable and equitable conditions which your Excellency, by virtue of the authority conferred upon you, may be pleased to establish for the grant of the land, being pleased to *pay* this our petition before the most excellent deputation, having first obtained the customary report which by law is intrusted to your Excellency,
42 in order that that most excellent body may order the aforesaid grant to be made to us, in which the advancement of agriculture and the well being of several families without occupation are interested. Therefore, we request and pray your Excellency that considering us as having presented ourselves, to yield to our petition, which we swear not to be done in malice; and in whatever may be necessary, &c.

JUAN DE DIOS MAESE. [RUBRIC.]
MANUEL DURAN. [RUBRIC.]
MIGUEL ARCHULETA. [RUBRIC.]
JOSE ANTONIO CASAOS. [RUBRIC.]

San Miguel del Bado, March 20, 1835.

SANTA FE, *March* 24, 1835.

On this date the Justice of El Bado is notified to proceed according to the directions of the most Excellent Deputation and this Government.

SARRACINO. [RUBRIC.]

San Miguel Del Bado.

In the Town House, on the 20th Day of March, 1835.

The foregoing petition signed by the subscribers thereto, is received. This corporation, desirous of encouraging the advancement of agriculture, and the location of so many families without occupation, and being true that the land solicited as above is public land, and without injury to any third party nor of (torn) — let this petition proceed to the most excellent territorial deputation, in order that its Excellency, if it sees proper, may provide them with
43 the land prayed for, the entailment of which is earnestly aspired to.

JOSE ULIBARRI, *President.* [RUBRIC.]
FRANCISCO SENA, *First Justice.* [RUBRIC.]
LEONIOS LUCERO, *Fourth Justice.* [RUBRIC.]
GERONIMO GONZALES,
Second Justice. [RUBRIC.]
THOMAS ARAGON, *Attorney.* [RUBRIC.]
JOSE CANDELARIA FLORES,
Third Justice. [RUBRIC.]

Before me,
JOSE ANTONIO CASAOS,
Secretary of Corporation. [RUBRIC.]

(Book 1st, page 6.)

Office of the Most Excellent Deputation of New Mexico.

SANTA FE, *March* 23, 1835.

In consultation of today, its excellency has resolved as follows: The land contained within the boundaries expressed in this petition is granted not only to the petitioners and the residents of El Bado, but also generally to all who may be destitute of lands to cultivate, provided "that the grant to these lands is made on conditions that the pasture and watering places are free to all. In view of all which, the political chief will receive the petition which may be made, and shall cause them to be provided for agreeable to what has been ordered."

In compliance with instructions, let these original proceedings be forwarded to the political chief, who will be pleased to ex-
44 ecute what is therein ordered by this deputation, by whose order the foregoing is done.

R. ABREAU, *Secretary.* [RUBRIC.]

In reference to the petition made by the President's (torn) — Juan de Dios Maese, Miguel Archuleta, Manuel Duran, and Jose Antonio Casaos, for themselves and in the name of twenty-five other individuals, dated the 20th inst., in which they solicited land in Las

Vegas, its excellency the provincial deputation has resolved the following in reference to the matter:

(Book 1st, Page 6.)

Office of the Secretary of the Most Excellent Deputation of New New Mexico.

SANTA FE, *March* 23, 1835.

In consultation of today its excellency has resolved, as follows: The land contained within the boundaries expressed in this petition is granted not only to the petitioners and the residents of El Bado, but also generally to all who may be destitute of lands to cultivate, provided "that the grant to these lands is made on condition that the pasture and watering places are free to all. In view of all which, the political chief will receive the petitions which may be made, and shall cause them to be provided for, agreeably to what has been ordered."

In compliance with instructions, let these original proceed-
45 ings be forwarded to the political chief, who will be pleased to execute what is therein ordered by this deputation, by whose order the foregoing is done.

R. ABREAU, *Secretary*. [RUBRIC.]

And I communicate it to you for the entire compliance therewith, taking into consideration that the grants are to be made according to the means of each one of the petitioners, in order that they may not leave any land which may be given to them without cultivation.

It is also convenient to suggest that you should select a site for a town to be built by the inhabitants, together with such other steps as you may deem proper for the security of the inhabitants, who, on account of setting on the land indicated, will be included in your jurisdiction; you will therefore adopt such measures as will be most conformable to the laws.

You will retain the petition relative to the matter, and return (torn —) as this should be (torn) — of the proceedings had by you; of all which you will inform this Government as soon as it is in condition to do so.

F. SARRACINO. [RUBRIC.]

SANTA FE, *March* 24, 1835.

To the Constitutional Justice of El Bado:

At this time there is no paper with the third seal in this office.

SARRACINO.

At Nuestra Senora de los Dolores de Las Vegas, on the
46 sixth day of the month of April, in the year one thousand eight hundred and thirty-five, jurisdiction of San Miguel del Bado, I, the citizen Jose de Jesus Ulibarri y Duran, constitutional justice, the only one in this jurisdiction, proceeded to this town for

the purpose of distributing the lands to twenty-five individuals, mentioned in the petition dated March 28, 1835, and in general to those who are without lands, not only those within this jurisdiction, but also anyone who may present himself to me who has no occupation; and having examined the land, I took the measures from north to south, after which I made the distribution according to that portion of the colonization law which refers to grants of the public lands, complying with the greatest care with the directions of the most excellent territorial deputation of New Mexico, contained in its decree of the 23d of March, 1835, and the decree of his excellency, the political chief, citizen Francisco Sarracino, dated the 24th of the same month; each individual received a gratuitous piece of land according to his means, with the understanding that of the lands given to the persons contained in the accompanying list none should remain uncultivated. The whole matter was concluded with the best measures which myself and the parties interested considered the most convenient, in order that each party should be satisfied with his share, setting opposite to each one's name the number of varas he received. The aforementioned list also contains the number of individuals who resided in the new settlement, and, after having made the distribution, I proceeded to make known to them the petition found at the commencement of this document, assigning them the same boundaries as are set forth in the petition. I also in-
47 formed them that the water and pasture were free to all, and that the joint labor should be done by themselves without any dispute, and that the wall surrounding the town marked out should be made by them all, which being done, that they notify the Justice, in order that he may mark out to each one equally the portion he is entitled to. Also, that each one be well provided with arms, the care of which is entrusted to the Lieutenant of Police of that ward, who shall inspect the arms every eight days, and, should he observe any infraction, to inform this court, as the head of the ward, thereof so as to provide the necessary measures. They were also informed that no one should sell his lands until he acquired the title prescribed by law to all colonists, and, in order that it may so appear at the present time and in the near future, placed the originals in the archives under my charge, signing the same with three attending witnesses, in the absence of (torn) —, there being none in the terms (torn) — law, to which I certify.

JOSE JESUS ULIBARRI. [RUBRIC.]

Attending: JOSE MIGUEL SANCHEZ. [RUBRIC.]
Attending: ANTONIO NIETO. [RUBRIC.]
Attending: MANUEL DURAN. [RUBRIC.]

DECREE.—The originals annexed to these proceedings, containing eight written pages, are deposited in the archives under my charge. I have so provided, ordered, and signed on said day, month, and year, and I sign with those in my attendance, to which I certify.

JOSE DE JESUS ULIBARRI. [RUBRIC.]

48 Attending: MANUEL DURAN. [RUBRIC.]
Attending: ANTONIO NIETO. [RUBRIC.]

List showing the number of individuals who occupy the new settlement entitled "Nuestra Senora de los Dolores de Las Vegas," and showing the number of yards of land each one has received; which is as follows, towit:—

Citizen Acensio Baca	175
Citizen Simon Blea	100
Citizen Jose Jesus Ulibarri	150
Citizen Santiago Ortega, selected in Balendre, 150 yards of land	150
Citizen Juan de Dios Maese	250
Citizen Juan Jose Baca	200
Citizen Francisco Lopez	100
Citizen Tomas Baca	225

For gardens, 125 varas towards the north, and 25 for a road to the watering place, one each side, and towards the south 750 varas for gardens, from whence the distribution continues, to the individuals contained in the list, noting that the number of yards herein stipulated for gardens and roads is opposite to the square plaza which I marked out on either side. I left this number of yards for the inhabitants of the place, to be divided equally between them:

Citizen	Jose Guadalupe Baca	150
Citizen	Miguel Rendon	150
Citizen	Rafael Rendon	100
Citizen	Cruz Rendon	150
Citizen	Jose Lucero	200
Citizen	Foribio Crespin	100
Citizen	Pablo Ulibarri	150
	Citizen Antonio Ulibarri	185
49	Citizen Juan Pedro Archuleta	150
	Citizen Eulogia Segma	100
Citizen	Ramon Ulibarri	100
Citizen	Teodocio Quintana	200
Citizen	Felipe Tafallo	250
Citizen	Jose de Jesus Duran	100
Citizen	Manuel Duran	175
Citizen	Antonio Romo	200
Citizen	Simon Romo	100
Citizen	Jose Maria Martin	200
Citizen	Antonio Martin	200
Citizen	Juan Nepomuceno Martin	100
Citizen	Miguel Martin, Jr	100
Citizen	Juan Jose Martin	100

NOTE.—That from Jose de Jesus Duran to the end of the above list the land is situated in a valley on the opposite side of the river, towards the east, also the number of varas set apart for gardens and road to watering place, lie between Jose Maria Martin and Miguel Martin, Sr., on the side above mentioned; and, in order that it may

so appear, I have signed this 6th day of April, 1835, attaching to this list of distributions the names of such individuals as may apply for lands after this date.

JOSE ULIBARRI.

	Citizen Victorine Baca	150
	Citizen Hilario Gonzales	455
	Citizen Antonio Gallego	200
	Citizen Jose Antonio Ulibarri, Sr. (Jose Miguel Garcia took the place of Jose Antonio Ulibarri, Sr., and entered upon his lands)	125
	Citizen Rufino Gonzalez	100
	Citizen Ambrocio Gonzalez	100
	Citizen Santos Gonzalez	100
	Citizen Francisco Sanchez	355
50	Citizen Rafael Rodriquez	166
	Citizen Julian Ulibarri	225
	Citizen Manuel Tafolla received a portion in the valley.	
	Citizen Mariano Gonzalez received a portion in another valley.	
	Citizen Mariano Gonzalez, Sr	150
	Citizen Manuel Garcia	250
	Citizen Desiderio Maese	100
	Citizen Rafael Duran	200
	Citizen Vicente Romero	200
	Citizen Santiago Ulibarri	600
	Citizen Jose Leon Romero	200
	Citizen Jose Antonio Flores	200
	Citizen Rafael Duran	200
	Citizen Rafael Romero	200
	Citizen Miguel Romero	200
	Citizen Juan Cristobal Armijo	220
	Citizen Jose Miguel Sanchez	200
	Citizen Francisco Maese	111
	Citizen Francisco Lucero	112
	Citizen Miguel Caerio	150
	Citizen Rafael Cestillo	100
	Citizen Jose Fernando Gallego	100
	Citizen Jose Dolores Sena	185
	Citizen Jose Ramon Sena	125
	Citizen Vicente Villanueva	100
	Citizen Jose Pablo Baca	100
	Citizen Ramon Baca	100
	Citizen Feribio Archuleta	100
	Citizen Fernando Chavez, (Ramon Pena took his land, the other having left)	100
	Citizen Foribio Martin	100
	Citizen Miguel Montanio	100
	Citizen Jesus Pacdo	100
	Citizen Juan Felipe Sanchez	100
	Citizen Maria Encarnacion Armijo	100

	Citizen Jose Flores	75
51	Citizen Cruz Martin, on the opposite side of the river, and two little valleys	100
Citizen	Polonio Herrera	100
Citizen	Ferrer Herrera	50
Citizen	Fabian Archuleta	100
Citizen	Simon Romo	100
Citizen	Ramon Vigil	100
The remainder was given to Juan Jose Vigil		170
Citizen	Anastacio Roibal	175
Citizen	Francisco Chavez, also a little valley	150
Citizen	Pedro Barela	100
Citizen	Julian Jiminez	100
Citizen	Ramon Benavides	100
Citizen	Antonio Garcia	100
Citizen	Rafael Rodriguez	100
Citizen	Pedro Gonzales	200
Citizen	Andres Truqueque	100
Citizen	Gabriel Crispin	100
Citizen	Ascensio Baca	100
Citizen	Miguel Archuleta	1,067
Citizen	Jose Maria Tafoya	700
Citizen	Jose Miguel Carrello	100
Citizen	Cristobal Baca	500
Citizen	Miguel Martin	125
Citizen	Martin Romero 50 more	100
Citizen	Domingo Gama 50 more	100
Citizen	Santiago Sandoval	50

Names of those in the canada of Pecos from the road dividing Lodemora to the Arroyo of Pecos:

Citizen	Jesus Maria Montoya ..... varas	200
Citizen	Santiago Montoya	100
Citizen	Antonio Jose Suiz	100
Citizen	Asensio Sanez	100
	Citizen Tomas Ulibarri	100
52	Citizen Rafael Rodriguez (Antonio Saenz takes the place of Rodriquez by purchase)	100
Citizen	Domingo Pena	200
Citizen	Nario Montoya (Anastacia Gonzalez takes his place)	150
Citizen	Luis Maria Gonzalez	170
Citizen	Patricio Benavides, (Guillermo and Valeriano take his place, with 75 varas each in the valley above the ravine on the river)	150
Citizen	Cristobal Baca	250
Citizen	Pablo Pando	100
Citizen	Jesus Pando	100
Citizen	Pedro Garcia	100
Citizen	Acensio Garcia	100
Citizen	Esquipula Baca	100

Citizen Julian Archuleta 100
Citizen Sebastian Duran 200
Citizen Salvador Martin 200
Citizen Rafael Niaso 200
Citizen Andres Fruqueque 100
Citizen Francisco Lucero 340
Citizen Jose Flores 100
Citizen Francisco Sanchez 400

Leaving 50 varas for a public road on the bank below where the Plaza is situated, where 50 varas are to be left. Pedro Barela, two little valleys at the springs.

Names of the citizens placed in possession of lands at the Puerticito, which is attached to the general list of distribution; that is, the lower Puerticito:

Citizen Ramon Cisneros.....no varas designated
Citizen Jose Pablo Maese .....no varas designated
Citizen Juan Sais .....varas 350
Citizen Antonio Sais 250
53 Citizen Filipe Tafoya 125
Citizen Jose Dolores Duran 100
Citizen Jose Duran 125
Citizen Rafael Cistillo 100
Citizen Rafael Garcia 125
Citizen Francisco Antonio Sanchez, (Upper Puerticito) 150
Citizen Juan Martin, for himself and father, from boundary of Mariano Gonzalez to the road.
Citizen Mariano Gonzales, Jr. 100
Citizen Don Lorenzo Baca 100
Citizen Ana Maria Chama 100
Citizen Augustin Quintana 100

(And a small valley in the river not measured.)

Citizen Juan Jose Martin, from the boundary of Augustin to the road.

Citizen Juan Gallego, at the mouth of the canon of the Saccra, on the one side of the arroyo, from a rock in the middle of the valley to a lower rock.

Citizen Sebastian Duran 100
Citizen Jesus Duran 100

One hundred varas of land were given to Gregorio Vigil of the remaining lands of the Aqua Sarca, designating as boundaries, on the west the little canon of the Aqua Sarca; on the east the Arroyo Abayo; on the north a hill near the creston, and on the south the common boundary, respecting the tracts already donated.

At the request of several citizens asking for lands, composing the drippings of the plaza, for gardens, I have given to each one twenty-

five varas in length, with the precise condition that they should fence them in; and in case of not doing so, they cannot claim
54 damages. The individuals are as follows:

Francisco Sanchez	25
Antonio Saenz	25
Simon Gallegos	25

In this respect the quantity of land which I have distributed, and which is watered by the ditch (Acequia) which was constructed across the square for the purpose of finishing the temple, is the remainder of the plain from the little hills, amounting to twenty varas, before descending to the meadow, which is divided by certain mounds of stone on the northern side before descending to the plain where the public road is to run.

Gegas, June 11, 1841.

Distribution.

Felipe Tafoya	150
Francisco Antonio Sanchez	100
Miguel Tafoya	100
Prudencio Griego	150
Jose Zamora	100

Land distributed on the new ditch (acequia) which was opened for the construction of the Upper Town:

Juan Manuel Martin ..... varas	150
Jose Manuel Angel	100
Pedro Bastos	200
Jesus Castillo	100
Jose Flores	100
Manuel Archuleta	100
Crisantos Salas	100
Felipe Martin	100
Antonio Jose Sais	50

At the Springs,

55 The foreigners William and Anthony Donaldson; Jose Manuel Angel, a little corner cerrito, not measured; Don Ramon Vigil, a valley on the other side of the arroyo of the Pecos from the wagon road to the blue hills, not measured.

In the Town of Las Vegas *of* the 25th day of November, 1846, at the request and by the official grant of land for cultivation made by the senior justice to the citizens contained in the present list, I proceeded with my attending witness to distribute said lands, and taking the measurement on the northern side, the individuals soliciting the same were located in the following manner:

	Varas.
Miguel Antonio Fadrique	200
Gertrudis Salazar	200
Juan Jarmillo	200
Martin Romero	200
Jose Maria Garcia	200
Vicente Segura	200
Juan Jose Montoya	200
Jesus Maria Maese	200
Rafael Duran	200
Miguel Martin, Jr.	200

Anisteo Quintana, from the boundary of Miguel Martin to the road without measurement.

The persons whose names appear on the foregoing list received the number of varas set opposite their names, it being understood that the water shall run on the bed of the river in case of a scarcity, (not legible) by appointment, and to which shall be attached the original communication granting the land; the present document to
56 be attached to the general grant made to Las Vegas, in order that it may so appear, and for security in all time to come.

To which I certify.

JUAN DE DIOS MAESE. [RUBRIC.]

Attending: FRANCISCO BUSTAMENTE. [RUBRIC.]
Attending: ANTONIO SAENZ. [RUBRIC.]

Office of the Senor Justice of the District of the Centre.

Informed of the contents of your note of today, touching petitions for lands made by certain individuals of that place. In reply, I have to state that you are authorized to place them in possession of said land on the conditions referred to yesterday.

In reference to what you requested me to investigate, touching the evidence given by the police officer, I reply that it is true; therefore you are requested to remove him from office, and appoint Francisco Martin, relieving him and exonerating him from all duty.

God and liberty.

TRINIDAD BARCELO.

VALLEY OF SAN AUGUSTIN, *November* 20, 1846.

To the Justice of the Peace, Don Juan de Dios Maese:

Las Vegas, on the 17th day, (torn) at the request of seven individuals who have registered a tract of public land, although the aforesaid land was given over three years since to another individual, who has not placed his hand on it; and seeing the neglect and little interest taken by the former possessor of the land, I, the citizen Hilaro Gonzalez, accompanied by the petitioners, having examined the land, and considered their petition just,
57 both being laborers and industrious in matters of agricul-

ture, I saw proper to place them in possession of the number of varas of land which each one can cultivate; with the further provision, besides those provided in the colonization laws, that within eighteen months they shall use every effort to prevent their land from lying idle and thereby lose their title thereto, and be given to others who will cultivate them.

The following were the individuals to whom lands were distributed, which list shall be attached to the general grant:

	Varas.
Jesus Gallegos	50
Jose Candelaria Garcia	50
Rafael Rodriquez	50
Jose Martin	50
Eulogio Gonzalez	50
Juan Pedro Archuleta	50

HILARIO GONZALEZ. [RUBRIC.]

Attending: ANTIONIO SAENS. [RUBRIC.]
Attending: RAMON GARCIA. [RUBRIC.]

SURVEYOR GENERAL'S OFFICE,
TRANSLATOR'S DEPARTMENT,
SANTA FE, N. M., *July* 10, 1857.

The above is a correct translation of the original on file in this office.

DAVID V. WHITING, *Translator.*

58

SURVEYOR GENERAL'S OFFICE,
SANTA FE, NEW MEXICO, *August* 20, 1859.

The above is a true copy of the original on file in this office.

WM. PELHAM,
Surveyor General.

59

SURVEYOR GENERAL'S OFFICE,
SANTA FE, NEW MEXICO, *September*, 1859.

I certify that the above is a true copy of the original on file in this office.

WM. PELHAM,
Surveyor General.

Report.

The Heirs of Luis Maria Baca and the Town of Las Vegas.

The first of the above mentioned cases was filed in this office on the 19th day of June, 1855, and the second on the 11th of September of the same year.

These cases were set for trial at different periods, but owing to the

absence of counsel and witnesses, were not brought to a final close until the 10th of December, 1858.

60 The claim of the heirs of Luis Maria Baca is based on the following facts, as set forth in the original papers filed in the office by the claimants.

On the 16th of January, 1821, Luis Maria Cabeza de Baca, in h[illegible] ame and that of seventeen male children, petitioned the provincial deputation of the State of Durango, under whose jurisdiction he avers the Province of New Mexico then was, for a tract of public land suitable for cultivation and pasture, called the Vegas Grandes, on the Gallinas river, in the jurisdiction of El Bado. In this petition he states that a like petition had been made to the authorities on the Province of New Mexico, and that by a decree of the 18th of February, 1820, the land was granted to him and eight other persons; but as these persons already possessed land elsewhere, they took no interest in its cultivation, and prays that the grant be made to himself and his aforementioned children, with the following boundaries, towit: On the north the Chapellote river; on the south the boundary of El Bado; on the west the summit of the Pecos mountain, and on the east the Aguage de la Llegua and the boundary of Don Antonio Ortiz. On the 29th day of May Diego Garcia Conde and Miguel de Zubiria, president and secretary of the provincial deputation of Durango, informed Facando Melgares, the Governor of New Mexico, that on the supposition that the companions of Don Luis Maria Cabeza de Baca had other lands whereon to pasture their cattle, that deputation had determined to confer upon the said Baca the land commonly called Vegas Grandes, provided the other parties had erected no buildings on the land or made any other improvements, unless it was voluntarily

61 agreed between the parties that Baca should reimburse them for any improvements they might have made, and that an equal quantity of land should be assigned to them wherever they would select it, in place of those donated to Baca; and the Governor was requested to inform the parties of what had been done.

On the 17th day of October, 1823, Bartolome Baca, political chief of New Mexico, directed the Alcalde of El Bado to place Luis Maria Cabeza de Baca in possession of the land called for in his petition, and the eight individuals who accompanied him in his first petition had placed no improvements on the land; and the Alcalde was required to certify at the foot of the order the proceedings had by him in the premises.

On the 27th day of February, 1825, Juan Bautista Vigil, the Secretary of the Most Excellent Deputation of New Mexico, certified that at the session of the 16th of the same month, a petition of Don Juan Antonio Cabeza de Baca, son of Luis Maria C. de Baca, and one of the grantees, was read, in which he refers to the grant made in the year 1821 by the Provincial Deputation of Durango, to which corporation New Mexico at that time belonged, and it was resolved that a record of the proceedings in the case be made and a true copy thereof given to the petitioner, and ratifying the grant made by the corporation of Durango on the date aforemen-

tioned. The petitioner was required to present himself before the Territorial Justice of El Bado with the copy above referred to, who, having then there the grant made to Salvador Montoya, was
62 required to place the aforesaid Luis Maria Baca and male children in possession of the aforesaid land, in accordance with the proceedings had in the premises and without injury to any third party.

On the 26th of December, 1825, Tomas Sena, the constitutional justice of El Bado, assigned as a reason for not placing the parties in possession of the land, as he had been ordered to do, that a proclamation had been issued for the election of his successor, which he was compelled to attend, and that on the second day after the election had commenced he was taken violently ill, and was compelled to postpone the election, as was well known to the messengers of Don Luis Maria Cabenza de Baca.

On the 13th of January, 1826, Governor Narbona again ordered the constitutional justice to place the parties in possession of the land granted.

The testimony of Manuel Antonio Baca shows that the parties were placed in possession of the land, although there is no documentary evidence of the fact.

The claim of Las Vegas is based on the following proceedings:

On the 20th day of March, 1835, Juan de Dios Maese, Miguel Archuleta, Manuel Duran, and Jose Antonio Casaos, for themselves and in the name of twenty-five others, petitioned the corporation of El Bado for a tract of land for cultivation and pasture situated in the County of El Bado, and bounded as follows: on the north by the Sapello river, on the south by the boundary of the grant of Don Antonio Ortiz, on the east by the Aguage de la Llegua, and on the west by the boundary of the town of El Bado.

On the same day the corporation of El Bado transmitted
63 the petition to the Territorial Deputation, with the recommendation that the petition be granted.

On the 23d of March of the same year, the grant was made by the Territorial Deputation, with the boundaries asked for, with the further provision that persons who owned no lands were to be allowed the same privilege of settling upon the grant as those who petitioned for it.

On the 24th of the same month and year Francisco Sarracino, the Acting Governor or Political Chief, directed the Constitutional Justice of El Bado to place the parties in possession, which was done on the 6th day of April of the same year.

It is not supposed that Congress intended, upon the establishment of the office of the surveyor general of New Mexico, that he should be required to determine questions of right between parties, but simply to ascertain whether the claims presented to him were of such a nature as to separate the land embraced within the boundaries set forth in them, from the public domain, and that conflicting claims between parties should be adjudicated before the proper tribunals of the country having jurisdiction in the premises.

Under this view of the case it will not be necessary to refer to

any other points made by counsel than those touching the sufficiency of the titles given and under which the respective parties claim.

It is contended by the last grantees that the concession made to Baca by the Provincial Deputation of Durango was void for want of power in the tribunal that assumed to make it.

At the time the grant was made to Baca, the country was in a state of confusion arising from the severance of Mexico from
64 the parent country. Many of the States had not yet given their adhesion to the new order of things, and in some places, as remote in the interior as New Mexico, were not even aware that a new order of things had been established; therefore the several authorities of the country exercised the power intrusted to them by the King of Spain or his lawful authorities, and as it is not disavowed that the State of Durango held jurisdiction over the Province of New Mexico, it is supposed, even in the absence of any positive proof, that the deputation of that State acted within the scope of its authority, when it made the grant to Baca; but in the confirmation of the grant by the Territorial Deputation of New Mexico in 1825, it is conceded that the Province of New Mexico was under the jurisdiction of that State, and that any grant made by its legally constituted authorities was a good and valid one. In the case under consideration no condition was attached; the grant was an absolute one. It has been held by our courts that where no conditions were attached, they could not be raised by implication. So satisfied was Governor Melgares that the Deputation of Durango had a right to make the concession, that he ordered the grantees to be placed in immediate possession, which he would not have done had he doubted in the least that the authorities of that State had exceeded their powers in granting lands in the Province over which he presided as Governor.

But, supposing the grant made to Baca by the Deputation of Durango to have been null and void, its confirmation by the Territorial Deputation of New Mexico in 1825, at which period, it is not denied, it had the power to grant lands, would be equivalent to a new grant; and, as it is complete in itself so far as the sever-
65 ance of the land granted is concerned, to separate it from the public domain, it is a matter of very little importance whether the former grant by the Deputation of Durango was valid or not. This grant is therefore deemed to be a good and valid one.

The grant made to Juan de Dios Maese and others is not contested on the ground of any want of formality in the proceedings, but, as far as the documentary evidence shows, is made in strict conformity with the laws and usages of the country at the time. Testimony is introduced to show that the heirs of Baca protested in 1837 against the occupancy of the land by the claimants under the latter grant, and that they went upon the land knowing the existence of a prior grant; but as these matters are not deemed to be pertinent to the case, so far as this office is concerned, it is not necessary to comment upon them.

It is firmly believed that the land embraced in either of the two grants is lawfully separated from the public domain and entirely

beyond the disposal of the general government, and that in the absence of the one, the other would be a good and valid grant; but as this office has no power to decide between conflicting parties, they are referred to the proper tribunals of the country for the adjudication of their respective claims, and the case is hereby respectfully referred to Congress through the proper channel for its action in the premises.

WM. PELHAM,
Surveyor General.

Surveyor General's Office, Santa Fe, New Mexico, December 18, 1858.

66 SURVEYOR GENERAL'S OFFICE,
SANTA FE, NEW MEXICO, *August* 21, 1859.

The foregoing is a correct copy of the original on file in this office.

WM. PELHAM,
Surveyor General.

EXHIBIT "B."

3161-1888. V. B.

Las Vegas Grant.

Application for Survey and Patent.

DECEMBER 5TH, 1891.

The Commissioner of the General Land Office.

SIR: By section 3 of the Act of June 21, 1860 (12 Stats., 71), it was enacted:

"That the private land claims in the Territory of New Mexico as recommended for confirmation by said Surveyor General in his reports and abstract marked "Exhibit A," as communicated to Congress by the Secretary of the Interior in his letter dated the Third of February, Eighteen hundred and sixty, and numbered from twenty to thirty-eight, both inclusive, be, and the same are hereby confirmed," &c.

No. 20 is described in "Exhibit A" as claimed by the
67 Town of Las Vegas, and Thomas Baca et als. It was surveyed as the "Las Vegas Grant" and the plat thereof approved by the Surveyor General December 8, 1860. As thus surveyed, it contains an area of 496,444.96 acres. No patent has been issued therefor.

On March 22, 1887, Mr. Julian, then Surveyor General of New Mexico, called the attention of your office to the said survey, expressing the opinion that said grant should not legitimately embrace more than 20,000 acres, which estimate was subsequently reduced to 6,000; and he urged that a re-survey of the same be ordered. After some correspondence, on November 5th, 1887, a re-

survey was directed to be made, in accordance with the views of Mr. Julian, and he was directed to use $1,000 of the appropriation for the survey of private land claims in New Mexico. In February, 1888, the Surveyor General reported that the above sum was nearly exhausted, and suggested the propriety of asking for a special appropriation from Congress of $6,000, the amount estimated as necessary to complete the work. Thereupon, your predecessor, on April 4th, 1888, transmitted the correspondence to this department for consideration and instructions.

On February 1st, 1890, Edward F. Hobart, the successor of Mr. Julian as Surveyor General of New Mexico, in a letter to your office, reviewed the recommendation and action of his predecessor, expressed disapproval of the same, and recommended that patent be issued to the Town of Las Vegas on the present survey.

On March 1st, 1890, one P. Millhiser, "for petitioners and claimants under original grantees," filed in your office a protest
68 against the proposed survey, and asked that a patent for said lands be issued to the grantees named in the original grant. This application of Millhiser was sent here by letter of March 6th.

On March 18th, 1890, the Board of County Commissioners of San Miguel County, New Mexico, as agents for the citizens of entire town of Las Vegas and those residing on the grant around the town, filed in this department an application for the issue of a patent for said grant to the Town of Las Vegas, to be delivered to said Board as custodian, in accordance with the request of the people in town meeting assembled.

On March 24th, 1890, the Commercial Club of Las Vegas filed here a petition earnestly urging that patent for said grant be issued according to the confirmation act of Congress, and be placed in the hands of the proper custodians.

In regular order, the first matter to be determined is whether the re-survey should be further prosecuted, as recommended by the former Surveyor General, and approved by your predecessor. A conclusion arrived at on this important subject will incidentally determine most of the other questions in the case, inasmuch as it is alleged that in making the former survey the officers entirely misapprehended the character and extent of the grant. A consideration of these matters, therefore, is necessary.

By the Act of June 21st, 1860, supra, Congress confirmed the grant "as recommended for confirmation," by the Surveyor General in his reports and abstract marked "Exhibit A." The exhibit referred to, in the column for designating the number of the claims has the numerals "20." In the column for the names
69 of claimants, in line with the figures "20," appear the words "Town of Las Vegas & Thos. Baca et als."

Then follows the list of papers sent up, nine in number, the last being the "Report."

"Exhibit A" thus only shows that claim was made for grant 20 by the Town of Las Vegas and the Baca claimants. (See p. 2 H. Ex. Doc. No. 14, 1st sess. 36th Cong.). We must therefore turn to

the report to find what the Surveyor General "recommended for confirmation." This report, as found in the same executive document (p. 42 et s.) is too long for insertion entire herein, though it must be largely quoted from.

It first deals with the claim of the Baca heirs, and finds that claim for the described land to be "a good and valid one," absolute, with no condition attached to it, and that it was made by the Mexican authorities, to Luis Maria Cabeza de Baca and his seventeen male children, in the year 1821, and afterwards confirmed to the children by the proper authorities in 1825. The Surveyor General, however, decided to determine whether the Baca claim was superior to the other. But Congress determined the matter in the affirmative, as will be seen by reference to Senate Reports of Committees (No. 228), 36th Congress, 1st session. This report states that the grant to Baca and his sons "was in fee and is a genuine and valid title," that the claimants under the title are willing to waive "their old title" and to enter an equal quantity of land elsewhere in the Territory. It was urged that the proposal be accepted, and to carry out this purpose, section 6 as now found in the Act of June 21, 1860, supra, was reported. Congress accepted the recommendation and
70 passed that act as before stated. This eliminates the Baca claim entirely from the case, except so far as it may be, perhaps necessary to refer to it incidentally in discussing the other claim, which alone is now to be dealt with.

As to this claim, the report of the Surveyor General, on page 44, says:

"The claim of Las Vegas is based on the following proceedings:

"On the 20th day of March, 1835, Juan de Dios Maese, Miguel Archuleta, Manuel Duran, and Jose Antonio Casaos, for themselves and in the name of twenty-five others, petitioned the corporation of El Bado for a tract of lands for cultivation and pasture situated in the County of El Bado and bounded, as follows:

"On the north by the Sapello river, on the south by the boundary of the Grant to Don Antonio Ortiz, on the east by the Aguage de la Llegua, and on the west by the boundary of the Town of El Bado.

"On the same day the corporation of El Bado transmitted the petition to the Territorial Deputation with the recommendation that the petition be granted.

"On the 23d of March of the same year the grant was made by the Territorial Deputation with the boundaries asked for, with the further provision that persons who owned no lands were to be allowed the same privilege of settling upon the grant as those who petitioned for it.

"On the 24th day of the same month and year Francisco Sarracino, the acting governor or political chief, directed the constitutional justice of El Bado to place the parties in possession, which was done on the 6th day of April of the same year."

71 At this point of the report a discussion is entered upon as to whether it is the duty of the Surveyor General to deter-

mine which of the grants had the superior title, and concluding that this duty does not devolve upon him, he closes his report saying:

"It is firmly believed that the land embraced in either of the two grants is lawfully separated from the public domain and entirely beyond the disposal of the general government, and that in the absence of the one, the other would be a good and valid grant; but as this office has no power to decide between conflicting parties, they are referred to the proper tribunals of the country for the adjudication of their respective claims, and the case is hereby respectfully referred to Congress through the proper channel for its action in the premises."

The Senate Committee on page 3 of its report before referred to, was of the opinion that the Surveyor General "recommended the confirmation of both these titles, leaving to the respective claimants the right of adjudicating their conflicting claims in the Courts." In this entire recommendation neither the Committee nor Congress concurred. But having disposed of the Baca claim otherwise, Congress confirmed the claim of the Town of Las Vegas, "as recommended," that is, confirmed its title to whatever lands were included in the grant referred to.

The Surveyor General does not state in his report what this title is, but leaves it to be implied. Its nature and character are not specified. In relation to the Baca Grant, on page 45, he says: "no condition was attached, the grant was an absolute one." But
72 in relation to the Las Vegas Grant he uses different language. He says:

"The grant made to Juan de Dios Maese and others is not contested on the ground of any want of formality in the proceedings, but as far as the documentary evidence shows, is made in strict conformity with the laws and usages of the country at the time."

Inasmuch as "under the laws and usages of the country at the time," different kinds of grants were allowable, the above quoted statement does not throw much light upon the nature of the title by which the lands within the Las Vegas grant were held, whilst it is made very plain that the Baca title was an absolute fee simple. In this view the Senate committee concurs saying of the latter: "This grant was in fee and is a genuine and valid grant;" whilst of the claim of the Town of Las Vegas, it says:

"This town claims under a grant made on the 25th of March, 1835, to Juan de Dios Maese and twenty-seven others, by the Territorial Deputation, on a petition which represented the land to be public land, and the petitioners were put in possession. The land has been divided out and several hundred families are located on it."

This statement of the committee does not afford much assistance in the immediate inquiry. The Surveyor General also says that he believes "the land embraced" in the grant "is lawfully separated from the public domain and entirely beyond the disposal of the general government." But this hardly helps, as the same thing could be said properly of any other grant recommended for confirmation.

The case is then in this condition: Congress confirms the
73 grant "as recommended" by the Surveyor General; that officer recommends that whatever title was granted by the Mexi-

can authorities be confirmed. Therefore, the confirmation of Congress was of the grant as made by Mexico to Maese and his associates, no more and no less.

What then, is the character and extent of that grant? The brief statement in this respect, found in the Surveyor's Report, hereinbefore quoted, does not furnish the answer to these questions, so that the papers transmitted by that officer to Congress, and upon which he based his recommendation, must be examined more at length.

From these papers (and their translation as found in Executive Document No. 14 supra, having been acted upon by Congress, will be accepted by this Department), it appears that on March 30, 1835, Juan de Dios Maese, Miguel Archuleta, Manuel Duran, and Jose Antonio Casaos, "for themselves and in the name of twenty-five men," presented a petition to the corporation of San Miguel del Bado, wherein it was stated that having registered a vacant piece of land known as Las Vegas, (the Meadows) on the Gallinas river, the same was solicited.

"For the purpose of planting and watering-places, and having the following boundaries: On the north by the Sapello river, and the south the boundary of the grant to Don Antonio Ortiz, on the east the Aguage de la Zegua, and on the west the boundary of the grant to San Miguel del Bado:" possession was to be received in the name of the federation, "on such conditions as might be established and would tend to the advancement of agriculture and the well-being of several families without occupation," who were interested. (p. 27 ibid.).

74 This petition was referred to the Territorial Deputation which, on March 23, 1835, resolved as follows:

"The land contained within the boundaries expressed in this petition is granted not only to the petitioners and the residents of El Bado, but also generally to all who may be destitute of lands to cultivate, provided, that the grant of these lands is made on condition that the pasture and watering places are free to all."

This resolution was ordered to be forwarded to the political chief, who was directed to cause the same to be carried into execution. This officer, F. Sarracino, in transmission of the action of the territorial deputation to his subordinate officer, the constitutional justice, who was to deliver possession, advised him to consider,

"That the grants are to be made according to the means of each one of the petitioners, in order that they may not leave any land which may be given to them without cultivation."

It was also suggested that a site for a town, to be built by the settlers, should be selected, and such other steps taken as might promote their security. (p. 29 ibid).

The constitutional justice, Jose Jesus Ulibarri, certifies that on April 6, 1835, he proceeded to the Town of Nuestra Senora de la Dolores de Las Vegas, presumably the selected site for the proposed town, for the purpose of distributing the lands to the twenty-five individuals mentioned in the petition, or any other without lands or occupations, who might present themselves. He says he meas-

ured the lands and made the distribution "according to that portion of the colonization law which refers to grants of the public
75 lands," the direction of the Territorial Deputation, and the decree of the Political Chief.

Each individual received a piece of land according to his means, with the understanding that none should remain uncultivated; no one should sell his lands until title was acquired as prescribed by law to all colonists; and the water and pastures were to be free to all.

A list of thirty-one names accompanies this certificate, containing the names of parties for whom the lands were set aside, and the quantity thereof within as well as without the new town. (p. 31 ib.). On June 11th, 1841, another list was returned, showing the distributions made to one hundred and eighteen other parties. On November 20th, 1846, another distribution was made to twenty-nine other parties, subsequently a further distribution was made to six parties of tracts formerly assigned but which had not been cultivated according to agreement. In these lists appear the names of three of the four original petitioners for the grant, to whom allotments were made, as follows: to Juan de Dios Maese 250 varas, Manuel Duran 175 varas, and Miguel Archuleta, 1,067 varas.

From the before-recited matters taken from the record, I am satisfied that the grant in question was not a grant in fee simple of the lands within the described boundaries to Maese and his associates. Indeed, so far as the record discloses, no such claim or pretension was ever set up until of late years, when the same was presented by Mr. Millhiser, in behalf of himself and others, who claim to have derived title from the original petitioners.

Evidently such a grant was not contemplated by the Terri-
76 torial Deputation when it declared that the land was granted "not only to the petitioners and residents of El Bado, but generally to all who may be destitute of lands to cultivate."

Evidently it was not understood that such a grant had been made when the acting governor, Sarracino, instructed his subordinates that the grant was to each according to his means, and that no more land was to be allotted than each could cultivate. The constitutional justice did not understand it to be such a grant when from time to time he distributed portions of the land to such as made application to him, and placed them in possession of their allotments, to the number of nearly two hundred.

And it may be safely assumed that the original petitioner did not regard it as a grant to themselves alone, inasmuch as three of the four named accepted allotments from the constitutional justice, and, if the others did not accept allotments likewise, they made no protest or objection to what, if Mr. Millhiser's theory be correct, they must have regarded as the unwarranted action of the officer in assuming to divide up and deliver possession of land to which the government had granted them exclusively a fee simple title.

And it is shown by the report of the Special Agent Rice, of Aug. 24, 1889, that after the allotments were made to settlers, the Mexican authorities made four other grants, more or less extensive, outside of the allotted lands, but inside of the exterior boundaries of the

Las Vegas Grant. The Surveyor General did not regard it as a grant to the parties originally named, because, so far as he recommended its confirmation, it was the Town of Las Vegas. And
77 finally, Congress, the controlling power in the matter, confirmed the grant to that town, which unquestionably would not have been done if it had been thought that the fee simple title had been passed under the grant to the petitioners. The contemporaneous and long continued construction by the officers of the law is entitled to have much weight, whilst the action of Congress is conclusive.

In addition to these matters, there has been a judicial judgment passed upon the claim of Millhiser, which, though not conclusive in the premises, is highly persuasive as far as it goes.

On August 20, 1887, Millhiser et al., trading as the Las Vegas Land and Cattle Company, filed a bill in the District Court of San Miguel County, New Mexico, against Padilla et al., wherein the title of the original petitioners for the grant, now set up before this department, was made the basis for asking the District Court to perpetually enjoin the defendants from maintaining an inclosure upon, or otherwise interfering with, the complainant's full emjoyment of the lands within the Las Vegas Grant, in which they claimed an undivided ownership by virtue of mesne conveyance from some of the alleged original grantees or their legal representatives.

It is not necessary to go into further details regarding that case, as they are fully shown in the pamphlet copies thereof and the proceedings therein found in this record.

It is sufficient to say here that the question of the Millhiser title was fairly represented and fully passed upon by the Court, adversely to his claims, as will be seen from the following extract from the opinion of the Court, as delivered by Chief Justice Long:

78 "It is clear to my mind from the record that the Government of Mexico, in making this grant, desired and intended to populate her public lands; that she intended to give in fee to each settler of the Las Vegas Grant, all the land he could cultivate, which after cultivation for a period of years, would become his to do with as he should choose; that tracts of lands were by the constituted authorities to be from time to time distributed to other settlers as they may make application, and that each subsequent distributee held under the original grant and under his possession and allotment.

It is not proved that the petitioners were men of large capital, intending at their own expense to colonize families and settle and maintain them on the grant. They were evidently poor persons, and of but moderate means, seeking homes for themselves and families as a means of subsistence, and desiring the settlement of other persons near them, as a means of building up the Town of Las Vegas for a protection against the hostile Indians. Each new settler constituted one more arm of strength for protection, an additional aid for the upbuilding of the settlement and new town, and naturally was welcome for the aid he gave to the common cause.

In my opinion the thought of exclusive ownership of the whole grant by the petitioners was never entertained during the jurisdiction of the Mexican Government, but, to the contrary, the decree of the Provincial Deputation, the distribution under official authority of different tracts to separate individuals for ten years after the date of the grant, the acts and qualified possession of the set-
79 tlers, all show the land unoccupied to be held for the benefit of all who might come, destitute of land to make settlement."

Entertaining these views, the Court made a decree that the complainants be forever barred and prohibited from disturbing the defendants in the quiet enjoyment of the lands in controversy, or from instituting any suit against them in that behalf. It does not appear that any appeal was taken from said decree which is stated by the Judge to have been accepted by the complainants as a condition on which they were permitted to have this bill dismissed.

In a brief filed here on October 16, 1890, Mr. Millhiser indulges in a criticism more personal in its animadversions upon the Judge who delivered the opinion in said case, than logical in its arguments against the correctness of his judgment. It is stated, however, in said brief that there was an earlier case decided in the same Court, wherein the validity of the title which Millhiser represents was upheld, and a copy of the record in the case referred to is filed.

An examination of the record shows that on March 15, 1873, a bill was filed in the District Court of San Miguel County, New Mexico, by Miguel Romero y Baca and others, who claimed to be heirs or legal representatives of the original grantees and owners of the Las Vegas Grant. The bill sets forth, in substance, that at a public meeting held in the Court House of the Town of Las Vegas, May Hayes and two associates were appointed commissioners to partition and divide up the said grant among themselves and others, not being of the number of the original grantees, their heirs and
80 assigns, and that the said commissioners proceeded to, and did partition and divide out to persons, desiring the same, parcels of the vacant and uncultivated portions of said grant, and have declared their intention to continue making such divisions and allotments; which action, it is alleged, will be to the irreparable injury of the complainants; and an injunction is prayed restraining said parties from proceeding further to divide said lands or taking possession of those so divided.

An answer was filed by Hayes and his associates, wherein briefly stated, they admit that they were acting as commissioners as stated, that the grant was confirmed to the Town of Las Vegas and in pursuance of the provisions of the same and by authority of the people of the town, they proceeded to distribute the vacant lands to inhabitants of the town who were destitute of lands, and that in so doing they acted in good faith and were carrying out the letter and spirit of the grant.

The answer admits that complainants have a legal interest in said grant, but deny that they have been authorized to act in the premises in behalf of any considerable number of the owners of said grant.

On the bill and answer, and after argument, on March 14, 1874, the opinion of the Court was filed, which is as follows:

"This cause coming on to be heard upon the Bill of Complaint "filed herein, and upon the answer and amended answer of the "defendants, upon reading said bill, answer, and amended answer, "and after hearing Mr. Catron of counsel for the Complainants and "Mr. Houghton for the defendants, and due deliberation being "thereupon had, the Court finds and determines that the said
81 "defendants, May Hayes, Juan Romero and Miguel Garcia "y Chavez, had no legal right or authority to concede or "donate, to any person or persons whomsoever, or to any incor- "poration, any of the unoccupied lands comprised within the limits "of The Las Vegas Grant, described and set forth in the pleadings, "and that their assumption of such right and authority in the man- "ner stated in the pleadings, tends to the prejudice and injury of "the rights and interests of the complainants in said Grant."

Whereupon it was decreed that the said parties be perpetually enjoined from proceeding further to partition and concede said lands or any part thereof.

It is obvious from the foregoing statement, which I think a fair one of the contents of the records, that the judgment of the Court was correct in holding that the alleged commissioners had no proper right or authority to divide and distribute the lands as they were doing, and inasmuch as it was conceded by the answer, that the complainants had "a legal interest in the lands of said grant," the Court might with propriety, hold that the illegal assumption of authority "tends to the prejudice of complainants and prohibits further action in that respect. But the Court does not decide or pretend to decide what are the rights, or the title, of the complainants in and to the lands within the Las Vegas Grant.

But even if the decision went to the extent claimed by Mr. Millhiser, it would not effect the judgment I have formed in the premises, inasmuch as it is the reasoning by which Chief Justice Long arrives at his conclusions, which is persuasive to my mind;
82 whilst in the record of the earlier case, referred to by Mr. Millhiser, there is only the bill, answer and order of the Court granting the injunction, as above given.

I am therefore of the opinion that the matters, hereinbefore set forth are sufficient to justify the rejection of the Millhiser claim for patent.

Having arrived at the conclusion that the grant as made to Maese and his associates was not an absolute grant of the land within the described limits, I cannot see how the confirmation of the same grant to the Town of Las Vegas, in the absence of some positive expression to that effect, can be construed to give to that town any larger estate than was originally granted. This grant is totally unlike those in Tameling vs. U. S. Freehold Co. (95 U. S., 644) and the Maxwell Grant case in 121 U. S. 325. Juridical possession had been delivered to the grantees in both of those cases by the Mexican authorities, and the Surveyor General recommended their confirmation as absolute grants, and as such they were confirmed.

Here there has been no juridical possession of the entire tract to any one, only of small portions to certain parties. The Surveyor General has not found the grant to be an absolute one to the Town, and did not recommend its confirmation as such. And it would seem that in the absence of some clear legislation to that effect, it would be dangerous construction of language to hold that all the lands within the described limits of the grant were confirmed absolutely to the Town of Las Vegas. If the confirmation was in fee simple to the Town of all the land within the bounds, it would necessarily include those lands occupied by Mexican and
83 other settlers, who hold no evidence to title under the confirmed grant, as well as those lands which being unoccupied belonged to the United States. It is not believed that Congress proposed to enact such injustice. Indeed the report of the Senate Committee, (p. 4 supra) expressly disclaims such purpose, for, after stating that the land is occupied by some several hundred families, it says that it is the duty of Congress—

"To legislate in such a manner as to prevent, if possible, so disastrous a result as the plunging of an entire settlement into litigation at the imminent hazard of being turned out of their homes, &c."

Nor should we transfer by doubtful implication so large a body of public land to a supposed confirmee. The rule is well settled that in case of doubtful construction, it must be solved in favor of the government. In this case, I do not feel myself justified, by anything I can find in the Act of Congress or the papers, in acquiescing in the claim of the Town of Las Vegas, which asserts that Congress confirmed to that Town, the absolute fee simple title to all the lands within said grant.

The papers in the case show that the entire tract embraced within the boundaries as described in the grant papers constitutes an area of nearly 500,000 acres, of which amount about 6,000 was taken up and occupied by settlers at the time the Territory of New Mexico came under the control of the United States Government and its laws.

My opinion is that Congress intended to confirm the title of these settlers and occupants to the lands thus assigned and occupied by them within the Town of Las Vegas, or outside of it, within
84 the prescribed boundaries of the grant, as originally made; and the confirmation was made direct to the town, not only as the most convenient form of making said confirmation and issuing patent thereon, but because the Town of Las Vegas acting in the interests and for the benefit of its people, was the proper party to ask for and receive from Congress the relief sought.

The setting apart of this large body of public land for those who, being destitute of land, might obtain a portion thereof on application, if a grant or contract at all, on the part of the Mexican Government, was at most a grant in future, dependent upon the performance of conditions precedent; as a contract it was executory in its nature, and consequently, so far as the conditions were unperformed, or the contract was unexecuted, when the United States acquired the territory in which the land lay, its laws superseded

those of Mexico, and thereafter, though private rights would be respected, the unassigned lands could only be acquired in accordance with the provisions of our land laws, not those of Mexico.

Entertaining these views, a re-survey should be made so as to include only the lands which had been allotted or assigned to settlers under the terms of the original concession at the time that the Territory of New Mexico became subject to the laws of the United States; and a patent for said lands should be issued on said survey to the Town of Las Vegas, so that the proper parties in interest could perfect their titles to their lands. The public surveys should be extended over the residue of said lands and the same thrown open under the general land laws.

The conclusion as to the patent arrived at herein seems
85 somewhat to conflict with the views of my predecessor in the Anton Chico case, reported in 1 L. D., 287 (Rec. Ed.). I have not the entire record in that case before me, and the opinion does not disclose the facts sufficiently to enable me to determine whether they are identical in the two cases. But even if they are the same, I believe it to be my plain duty to cause the patent to issue in the name of the Congressional Confirmee, the Town of Las Vegas, rather than to other parties not named as confirmees.

As to the point that the Town of Las Vegas, not having been incorporated, is a legal nonentity, to which no title would pass under the patent, it may be replied that if this be true, as a matter of fact and law, the consequence would be more far-reaching, for Congress, in its wisdom confirmed the grant, as shown, to the said Town, there simply has been no confirmation of the grant and nobody is as yet entitled to the patent. But I do not understand this to be the law of this case.

Under the Mexican system, originally people were required for self protection and other reasons to live in towns whilst cultivating outlying lands; and the general laws of that country gave to such towns or pueblos four square leagues of land for the use of the inhabitants thereof, and occasionally, by special concession, as in the present instance, grants of larger area were made for the same purpose. None of these towns were ever incorporated, in the sense in which we use the terms, so far as my research has gone. They were aggregations of people who lived together for mutual protection, and under the laws and customs of that country had officers for the administration of their municipal affairs; but there
86 was no actual charter, no act of incorporation conferred by the superior power of the State, only the implication, arising for the recognition of the existence of such towns, with authority to guide their town affairs.

This was the condition of things when New Mexico was acquired by the United States, and the legal status of these towns and their capacity to take as confirmees of grants of public lands have been recognised in too many instances by Congress and the Executive Departments through too long a period of time to be now seriously questioned.

In the case under consideration the Town of Las Vegas was not

in existence at the time the original grant was asked for by Maese and his associates. One of the purposes for which the concession was made was to establish that town, and it was established after the manner and under the laws of Mexico, and has had an actual existence ignored the original petitioners for the grant and confirmed it to the Town; and to that extent made a change in the Trustee. In view of all this, it is too late now to say that Las Vegas has no legal existence. If a corporate capacity be necessary to enable the town to take under the grant, every presumption must be that it has the necessary corporate capacity, and the law so implies. (Dillon on Municipal Corporations, par-. 21 and 22.) At all events, the town having an actual existence, this department will not now challenge its capacity to take what Congress clearly intended to give. If error be committed in following this course, that error can be redressed in the proper judicial tribunal. In the absence of a judicial construction otherwise, the Executive must follow the Act of Congress as read and understood.

87 As to the question asked relative to the declaration in the grant making the "pasture and watering-places free to all," I do not think the department is properly called upon to answer it, as the judicial tribunals of the country are the proper ones to which those holding lands under the grant should appeal for protection against the invasion of their rights, if they have any, and not to this department in the administration of the land laws.

Herewith are returned the papers in the case.

Very respectfully,

JOHN W. NOBLE, *Secretary.*
G. C.

EXHIBIT "C."

Acting Secretary to the Commissioner of the General Office.

(W. V. D.) December 17, 1898. (W. C. P.)

Under date of December 5th, 1891, Secretary Noble addressed a letter to your office wherein he gave a history of the Mexican Grant commonly known as Las Vegas, and directed a survey thereof to include only such lands within the out-boundaries of the grant as had been taken up and occupied by settlers at the time the Territory of New Mexico came under the control of the United States Government, and its laws, and that patent issue to the Town of Las Vegas on such survey (13 L. D. 646). A motion for review of that decision, filed in behalf of Moses Millhiser et al., claimants

88 under the grant, was denied July 16, 1892 (15 L. D. 58).

A further motion filed by the County Commissioners of San Miguel County, New Mexico, and asking for reversal of the decisions of December 5, 1891, or so much thereof as related to the extent of the grant, was denied May 16, 1894.

Before a survey was made under that decision, Jefferson Raynolds for himself and the other inhabitants of the Town of Las Vegas, in

New Mexico, and of the Las Vegas Grant and the Town of Las Vegas, filed a bill in equity in the Supreme Court of the District of Columbia, making Hoke Smith, Secretary of the Interior, and Silas W. Lamoreux, Commissioner of the General Land Office, parties defendant, and asking that said defendants be perpetually enjoined from carrying out the decision of Secretary Noble, in any manner interfering with the rights, titles and privileges of the plaintiffs, and that the plaintiff's title be quieted. The defendants filed a demurrer to this bill which was overruled, and a decree entered, enjoining the defendants from carrying out the decision of Secretary Noble or interfering with said lands or the right and title of the plaintiffs, and decreeing, "that all clouds upon said title be removed, and the same be quieted and held to be a good and indefeasible title in and to the Town of Las Vegas."

The defendants appealed to the Court of Appeals of the District of Columbia, where the decree below was confirmed. A further appeal was taken to the Supreme Court of the United States, but the defendants having retired from Office, that Court, on March 15, 1897, entered an order reported in 166 U. S. 717, as follows:

89 "Decree reversed on authority of Warner Valley Stock Co. v. Smith, 165 U. S. 28, each party to pay their own costs in this Court, and cause remanded to the Court of Appeals with directions to reverse the decree of the Supreme Court of the District of Columbia and remand the cause to that Court with direction to dismiss the bill with costs, for want of proper parties."

The Town of Las Vegas asks that a patent be issued to the town for the land included in said grant as surveyed in 1860. Marcos Maese et al., claiming to be the original grantees or their representatives, have also filed a petition asking that patent be issued in the names of the original grantees. These parties each filed similar papers in your office, which have been transmitted for consideration here. Elaborate arguments, both oral and printed, have been submitted.

No patent having issued, the matter is still within the jurisdiction of this Department to determine what land such patent should cover and to whom it should issue. (Aspen Consolidated Mining Co. v. Williams, 27 L. D. 1.)

The history of this grant has been fully set forth in the former decision, and need not be repeated here in detail. A grant was made by the Mexican authorities to Juan de Dios Maese and others, and the parties were formally put in possession thereof April 6, 1835. The act of July 22, 1854 (10 Stat. 308) established the office of Surveyor General for the Territory of New Mexico, and by section eight described that he should "ascertain the origin, nature, character and extent of all claims to lands under the laws, usages and customs of Spain and Mexico," and make full report of

90 all claims, denoting the various grades of title "with his decision as to the validity or invalidity of each of the same under the laws, usages and customs of the country before its cession to the United States."

Francisco Lopez, Henry Connelly and Hilario Gonzalez, "on behalf of themselves and a large number of citizens of the United States, residents of the Town of Las Vegas and its vicinity," presented their petition to the Surveyor General, setting forth that they were claimants and legal owners of a certain tract of land in the County of San Miguel, granted to "Juan de Dios Maese, Miguel Archuleta, Manuel Duran, and Jose Antonio Casados, in their own behalf and that of twenty-five other inhabitants of said County, and asking that their claim and title to said lands be examined and that said grant be confirmed to them. This grant was in conflict with a prior one to Luis Maria Baca, and the Surveyor General did not attempt to decide the rights of the respective claimants, holding that to be no part of his duties. He states that the original petition was for a grant bounded as follows: "on the north by the Sapello river, on the south by the boundary of the grant of Don Antonio Ortiz, on the east by the Aguaje de la Yegua, and on the west by the boundary of the Town of El Bado": that the corporation of El Bado recommended that the petition be granted; that the Territorial Deputation made the grant, "with the boundaries asked for, with the further provision that persons who owned no lands were to be allowed the same privileges of settling upon the grant, as those who petitioned for it"; and that the parties were placed in possession. In regard to the validity of the grant, he said: "The grant made to Juan de Dios Maese and others is not contested on the ground
91 of any want of formality in the proceedings, but as far as the documentary evidence shows, is made in strict conformity with the laws and usages of the country at the time."

The Surveyor General thus decided in favor of the validity of this grant, with the boundaries set forth in the original petition, as against all the world, except the claimants under the Baca grant.

His opinion as to the grant is more fully set forth in the last paragraph of said report, which reads as follows:

"It is firmly believed that the land embraced in either of the two grants is lawfully separated from the public domain and is entirely beyond the disposal of the general government, and that in the absence of the one, the other would be a good and valid grant; but as this office has no power to decide between the conflicting parties, they are referred to the proper tribunals of the country for the adjudication of their respective claims, and the case is hereby respectfully referred to Congress through the proper channel for its action in the premises."

A schedule of nineteen private land claims in New Mexico, numbered 20 to 38 both inclusive, was submitted to Congress February 3, 1860. The names of the claimants of No. 20 are given as "Town of Las Vegas and Thos. Baca et als."

In the Senate this matter was referred to the Committee on Private Land Claims, whose report, after stating that the report of the Surveyor General on each claim had been examined by them, says, "they concur fully in the report of that officer, recommending the

confirmation of all said claims except that which is numbered
92 twenty-six, in the name of Juan de Vigil." The committee evidently understood that the claim here under consideration was recommended for confirmation as a whole and to the extent of the boundaries mentioned, and the further action of Congress in the premises was on this hypothesis. As to this particular claim, the committee said:

"Amongst the claims embraced, however, in this second report and recommended for confirmation are two which cover the same tract of land and are embraced in one number, towit: No. 20; to this tract the two claimants are, first—the heirs of Luis Maria Baca, second—the Town of Las Vegas or Las Vegas. This town claims under a grant made on the 25th day of March, A. D. 1835, to Juan de Dios Maese and twenty-seven others by the Territorial Deputation, on a petition which represented the land to be the public domain, and the petitioners were put in possession. The land has been divided out, and several hundred families are located on it."

This committee further stated that the claimants under the Baca grant had expressed a willingness to waive their older title in favor of the settlers, if allowed an equivalent quantity of land elsewhere in the Territory, and to carry out this proposition, presented a substitute for the bill referred to them. The grant was confirmed by the Act of June 21, 1860 (12 Stat. 71), as follows:

"That the private land claim in the Territory of New Mexico, as recommended for confirmation by said Surveyor General in his reports and abstract marked 'Exhibit A,' as communicated to Congress by the Secretary of the Interior in his letter dated the 3d day of February, 1860, and numbered from 20 to 38 both inclu-
93 sive, be and the same are hereby confirmed, with the exception of the claim numbered 26, etc."

By section six, the claim of the Baca heirs was provided for, as follows:

"That it shall be lawful for the heirs of Luis Maria Baca to make claim to the said tract of land as is claimed by the Town of Las Vegas, to select instead of the land claimed by them, an equal quantity of vacant land, not mineral, in the Territory of New Mexico."

The Commissioners of the General Land Office at once directed the Surveyor General of New Mexico to have the exterior lines of the Las Vegas town claim properly run and connected with the public survey, says:

"The area of the Las Vegas town tract having thus been ascertained, the right will accrue to the Baca claimants to locate a quantity equal to the area of the town tract elsewhere in New Mexico as vacant land, not mineral, in square bodies not exceeding five in number."

A survey was made showing the grant to contain 495,446.96 acres, the plat of which was approved by the Surveyor General December 8, 1860.

The survey thus made remained unquestioned until 1887, when the Surveyor General, then in office, expressed the opinion that the

grant as surveyed included more land than should have been included, and recommended that a re-survey should be made. This view was adopted by your officer, and a re-survey was ordered and begun, but not completed for lack of funds.

In 1890 the Surveyor General expressed his disapproval of the recommendations of his predecessor for a re-survey, and
94 recommended that the patent issue to the Town of Las Vegas on the original survey. The matter remained in this condition until the departmental action of December 5, 1891, supra.

In the meantime the Baca claimants had made selection and had obtained the full number of acres reported by the original survey as included in the grant. In the former decision it was said there was no doubt as to the extent of the grant and confirmation, but the facts do not seem to justify that statement. The petition was for a grant with specified boundaries, the grant was made conformable to the petition, the parties were put in possession of the grant as made, the Surveyor General recommended the confirmation of the grant as a whole as against all but the Baca heirs, the Senate Committee approved the recommendation of the Surveyor General, speaking of the land grant as "this tract," Congress confirmed the grant as recommended and provided for the satisfaction of the adverse claim of the Baca heirs by allowing the claimants to select an equal quantity of land elsewhere, a survey was made to ascertain the quantity of land in the grant as finally confirmed, and from that time (1861) until 1887 the grant was treated as confirmed for the full quantity of land within the boundaries mentioned in the original petition.

Until 1887 there was no suggestion in any of the proceedings that the grant should be limited to less land than the quantity embraced in the boundary mentioned in the original petition.

The conclusion irresistibly follows from these facts, that the grant was confirmed by Congress as an entirety for the full amount
95 of land embraced within the boundaries set forth, and patent should issue therefor.

The action of Congress is conclusive. The Supreme Court, in Tameling v. U. S. Freehold, etc. (93 U. S. 644) speaking of private land claims, uses the following language:

"No jurisdiction over such claims in New Mexico was conferred upon the courts; the Surveyor General in the exercise of the authority with which he is invested, decided them in the first instance. The final action on each claim reserved to Congress is, of course, conclusive, and therefore not subject to review in this or any other forum."

In the Maxwell Land Grant Case (121 U. S. 325-365), the court quotes from the Tameling case and re-affirms the doctrine there laid down. The grant involved in the Maxwell case was confirmed by the same act as was this Las Vegas grant, and it was there contended that the quantity of land covered by the patent was far in excess of the quantity authorized by the Mexican laws for such grants. The Court, however, says that this is a question which the Surveyor General was authorized to report upon and for Congress to finally de-

termine. It also pointed out that some of the grants by this same act were limited as to extent and location, and it is therefore concluded that as to those not so limited, it was intended to be a full and complete confirmation as regards the legal validity, fairness and honesty of the grant as well as its extent." The same argument is equally applicable here.

The question as to whom the patent should issue was considered when the matter was before the Department in 1891, and it was then held that it should issue to the Town of Las Vegas, inasmuch
96 as the confirmation was made direct to the town. On review it was strongly urged that it was error to hold that patent should issue to the Town, but that position was adhered to by the Department (15 L. D. 58). The grant as petitioned was to be to individuals, but as finally made by the Territorial Deputation, provisions were made whereby others having no lands should be allowed the same privilege of settling upon the land as those who had petitioned for the grant.

This, like the most Spanish and Mexican grants, was made with a view to the establishment of a community for protection against the Indians. It is asserted that the Spanish word "plaza" as used in the papers relating to this grant, was erroneously translated "town," as it simply meant a square place. However that may be, it is certain that the building up of a town was to be expected and actually followed the settlements up to the lands granted. The community was added to until at the time of the cession to the United States, more than two hundred souls had been recognised as entitled to share in the benefits of the grant, and had been put in possession of the tracts of land within the boundaries petitioned for. A town had grown up before the cession to the United States. The petition to the Surveyor General asking for an examination and confirmation of the grant was made by Francisco Lopez, Henry Connelly, and Hilario Gonzalez," on behalf of themselves and a large number of citizens of the United States, residents of the Town of Las Vegas and its vicinity." The exact interests of the petitioners, or the manner in which they became the owners, is not set
97 forth. In the report of the Surveyor General, who was by the Act of July 22, 1854, supra, made a special tribunal to ascertain the origin, nature, character and extent of such claims and decide as to their validity or invalidity, this grant is spoken of as the "claim of Las Vegas," and in the schedule of cases submitted by him there is a column headed "Names of Claimants," and under this head the claimants of No. 20 are designated as "The Town of Las Vegas and Thos. Baca et als." This shows that the Surveyor General regarded the claimants for this grant to be the town.

The Senate Committee in the report heretofore referred to, designated one of the claimants of this grant as "the Town of Las Vegas or Las Vegas," and says: "This town claims under a grant made on the 25th of March, 1835, to Juan de Dios Maese and twenty-seven others." The act of confirmation July 21, 1860, (12 Stat. 71) confirmed the claim, with others, as recommended by the Surveyor General. This would be sufficient to justify the conclusion that the

confirmation was to the town, but this conclusion is further supported by the fact that in providing for the heirs of Baca, Congress specially said that the land to be selected by them should be in place of the land "claimed by the Town of Las Vegas." It seems clear from all this that the confirmation was intended to be to the town.

The declaration of Congress as to the confirmee is accepted by this Department. If Congress had made a grant to the Town of Las Vegas there would have been no room for discussion as to whom the patent should issue. The Supreme Court has said that an act
of confirmation passes the title of the United States as effec-
98 tually as if it contained in terms a grant de novo. Ryan et al. v. Carter et al. (92 U. S. 78). The title to the land passed by the confirmatory act and the recipient thereof was the confirmee indicated by the act. This was the Town of Las Vegas and to that confirmee must the patent issue.

That the people composing the town were understood to be the confirmees is shown by various annual reports of your predecessors, where, in giving a list of private land claims, under the heading "confirmee," or "present claimants," the phrase "inhabitants of town," is used. The question as to the proper patents has been twice considered by this Department, and both times it was held to be the town (13 L. D. 646; 15 L. S. 58). By the decree rendered by the Supreme Court of the District of Columbia in the suit heretofore mentioned, it was adjudged that the lands contained in said grant "were absolutely and unconditionally confirmed to the Town of Las Vegas, and that said town became and is the absolute owner thereof in fee." Upon appeal this decree was affirmed by the Court of Appeals.

It is thus seen that the uniform holding has been that the Town of Las Vegas is the confirmee and owner of the lands embraced in this grant.

For the reason herein set forth, it must be held that said grant was confirmed to the Town of Las Vegas for the full quantity of land embraced within the boundaries set forth in the original petition.

The decisions of this Department holding to the contrary, are to that extent hereby revoked and set aside and the case is returned to your office for such action as may be necessary to the issuance of patent, according to the views herein set forth.

99 (Endorsements:) No. 6220. District Court, San Miguel County. Ex Parte, G. E. Priest et al. vs. Board of Trustees of Las Vegas Grant, etc. Answer. Filed in my office Jan. 29, 1907. Secundino Romero, Clerk.

Jones and Rogers, E. V. Long, C. A. Spiess, S. B. Davis, Jr., and Louis C. Ilfeld, Att'ys for Respondents. E. Las Vegas, N. M.

And afterwards, to wit, on January 29th, 1907, there was filed in said clerk's office the counterclaim of Respondents, in words and figures as follows, to wit:

TERRITORY OF NEW MEXICO,
County of San Miguel:

In the District Court.

No. 6220.

Ex Parte GEORGE E. PRIEST et als.

Come now the Board of Trustees of the Town of Las Vegas, and the said several trustees in the petition mentioned, Respondents, in the above entitled cause, and leave of the court first had and obtained, by way of counter-claim, and as an additional defense to the above entitled action, represent and state to the court as follows:

(1) On the 19th day of July, 1894, there was filed in the said District Court, by the petitioners herein, their bill of complaint against certain defendants, as will appear by the said bill of
100 complaint, and on the same day in said Court the affidavit of John D. W. Veeder, as agent for the complainants and petitioners herein, as the affidavit for the service of process in said cause by publication upon certain non-residents and unknown defendants. That thereafter there was filed in said cause a proof of the notice of publication, which said proof has a copy of the said notice attached to the same. A subpœna in chancery was duly issued and served upon certain of the named defendants in said cause, but no service was made in said complaint and notice of publication as, "The unknown claimants of interests in the lands and premises hereinafter described, adverse to the complainants," except the service attempted to be made by publication as aforesaid; nor was any appearance entered in said cause by or on behalf of any of the defendants designated as "Unknown Claimants," etc. Thereafter on the 6th day of September, 1894, a certificate of no appearance was filed in said cause, and on September 13, 1894, a decree pro-confesso was entered in said cause; all of which records and proceedings remain on file and of record in the said District Court wherein the same were docketed, and appear as cause No. 4512, reference to which records and proceedings is hereby made, and a copy thereof filed herewith, marked Exhibit "D" and made a part hereof with the same force and effect as if the same had been inserted herein — full.

Thereafter a decree was entered in said cause No. 4512, on the 15th day of September, 1894, a copy of which said decree is attached to the original complaint in this cause and marked for identification Exhibit "A."

(2) It is claimed by the petitioners herein that the effect
101 of the proceedings of the said District Court in said cause No. 4512 had the legal and equitable effect of quieting the title of the said petitioners as against all these respondents, in and to the lands and real estate mentioned in said cause and in the petition filed herein, and these respondents aver that such claim constitutes a cloud upon the title of these respondents and the Town of Las Vegas, whom they represent, in and to such lands.

(4) That the said land and real estate in petitioner's complaint described is a part and portion of that certain tract of land and real estate known and called the Las Vegas Grant.

(5) That in the year 1858, one William Pelham, then the Surveyor General of the Territory of New Mexico, acting under a certain petition then presented to him on behalf of the heirs at law of one Luis Maria Cabeza de Baca, investigated and examined into said Las Vegas Grant; and thereafter, on the 18th day of December, 1858, made and caused to be forwarded to the Commissioner of the General Land Office, his report and findings as to the said Las Vegas Grant.

(6) That at the time of the making of said report the said Surveyor General also forwarded to the Commissioner of the General Land Office of the United States, all of the said petitions, grant, papers, reports of various officers of the Republic of Mexico, and all other documents introduced before him, and testimony taken by him in reference to said grant,—copies of which said petitions, documents, grants and testimony, together with a copy of said report and findings of said Surveyor General, are attached to the answer herein, marked Exhibit "A," and made a part hereof, as
102 fully and to the same effect as though herein set out.

(7) That the said report of said Surveyor General and all of the documents and testimony aforesaid, were thereafter transferred to the Congress of the United States, and on the 21st day of June, 1860, the Congress of the United States passed a certain act entitled, "An Act to confirm certain Private Land Claims in the Territory of New Mexico," which said Act appears as Chapter 167 of Volume 12, of the United States Statutes at Large, and is hereby referred to.

(8) That thereafter, on July 26th, 1860, instructions were issued by the land department to the Surveyor General of New Mexico, in which the latter was directed to make a survey of the Las Vegas Grant, and determine the area thereof, and to furnish the Baca claimants with a certificate of this right and the area they were to select in five separate parcels, their total area to be equal in quantity to the area of the town tract.

(9) That in 1861, a survey known as the Pelham Survey was made of said grant, pursuant to said instructions by the Surveyor General of New Mexico, and approved by him, but not by the Commissioner of the General Land Office or the Secretary of the Interior, and the area thus determined to be 496,446.96 acres, for which area a certificate was issued to the Baca claimants, and that area of land was duly located by them in five separate square parcels, and such locations duly approved by the proper officers of the Government, whereby the claims of the heirs of Luis Maria Cabeza de Baca to said tract of land within said Las Vegas Grant, became extinguished and at an end.

103 (10) That Territorial maps issued by the Government after said survey, had the Las Vegas Grant located upon them according to said survey, as a confirmed grant.

(11) That on the 22nd day of March, A. D. 1887, George W. Julian, the then Surveyor General of the Territory of New Mexico,

by an official communication addressed to the Commissioner of the General Land Office of the United States, expressed his opinion that the said grant could not legitimately embrace more than twenty thousand acres, and urged that a re-survey of the same be ordered; and on the 5th day of November, A. D. 1887, resurvey thereof was ordered to be made by the Commissioner of the General Land Office, in accordance with the recommendations of said Surveyor General.

(12) That said Surveyor General proceeded to make the re-survey aforesaid, but the same was never completed, as shown by recitals of Exhibit "C," attached to the answer herein. That said survey was extended over that portion of the Las Vegas Grant which embraced the land described in the petition in this action, and the lands in the vicinity thereof, and by said survey said lands described in the petition in this action were excluded from the said Las Vegas Grant and left as the public domain of the United States.

(13) That on the 1st day of February, 1890, Edward F. Hobart, then Surveyor General of the Territory of New Mexico, in a communication to the Commissioner of the General Land Office of the United States, reviewed the recommendations aforesaid, expressed disapproval of the same and recommended that a patent be issued to the Town of Las Vegas, according to the said survey of the
104 year 1861, being what is known as the Pelham survey.

(14) That thereupon, John W. Noble, the then Secretary of the Interior of the United States, on the 5th day of December, 1891, by an order and opinion in writing, ordered that a re-survey of said grant should be made in accordance with the recommendations of the said George W. Julian—a copy of which opinion is attached to the answer herein, marked Exhibit "B," and made part hereof as fully and to the same effect as though herein set out.

(15) That thereafter, certain persons claiming to act for and on behalf of said Town of Las Vegas, petitioned for a review and reversal of the said ruling of the Department of the Interior, and on the 16th day of May, 1894, Hoke Smith, the then Secretary of the Interior of the United States, denied the said petition and ordered the issuance of a patent in accordance with the said decision of said John W. Noble, of December 5th, 1891.

(16) That on the 17th day of December, 1888, Thos. E. Ryan, then the Acting Secretary of the Interior of the United States, by his written opinion and order to the Commissioner of the General Land Office of the United States, revoked and set aside said decision and order of said John W. Noble, and directed the said Commissioner of the General Land Office to take such action as might be necessary to the issuance of a patent to the Town of Las Vegas, for the full quantity of land embraced within the boundaries set forth in the original petition for the making of the Las Vegas Grant hereinbefore referred to, a copy of which said decision and order is attached to the answer herein, marked Exhibit "C," hereby
105 referred to and made part hereof, as fully and to the same effect as though herein set out in full.

(17) That in the year 1890, one P. Milhiser, for himself and for other persons, claiming to be the grantees of the Las Vegas Grant,

filed a petition with the Commissioner of the General Land Office, asking that a patent to the said Las Vegas Grant be issued to them or to their predecessors in interest; and thence continuously until the 6th day of January, 1902, proceedings were being taken, claims presented before the Secretary of the Interior of the United States, and litigation instituted and carried on in the District and Supreme Courts of the District of Columbia, and the Supreme Court of the United States, and other Courts, between said P. Milhiser and his associates, and the persons claiming to represent the said Town of Las Vegas, and the Secretary of the Interior and Commissioner of the General Land Office, for the purpose of enjoining further prosecution of the survey in accordance with the decisions aforesaid of Secretary Noble and Secretary Smith; to have said decisions vacated and annulled and to determine to whom the patent should issue for said grant, until, on said last mentioned date, the Supreme Court of the United States decided that a patent to the grant aforesaid should be issued in the name of the Town of Las Vegas, as confirmee and grantee thereof.

(18) That in the years 1889 and 1900, the Commissioner of the General Land Office of the United States, caused a re-survey of the said Las Vegas Grant to be made by one Frank M. Johnson, by which survey the area of said Las Vegas Grant was determined
106 to be — acres, upon which the patent hereinafter mentioned was issued.

(19) That each of said several surveys fixed different exterior lines as the outlying boundaries of the said grant.

(20) That on the 27th day of June, 1903, a patent for said tract of land, in accordance with the said survey of Frank M. Johnson, was duly issued by the United States of America to the said Town of Las Vegas, which said patent is recorded in Book 54, page 351, of the records of deeds of San Miguel County, New Mexico, to which said patent and the record thereof reference is hereby made.

(21) That at the time of the institution and carrying on of the suit to quiet title in the petition in this cause described, and at the time of the rendition of the decree in said petition set out, the plaintiffs in said action to quiet title, and their representatives in said suit to quiet title, well knew all of the facts hereinbefore alleged, as to the confirmation of the said Las Vegas Grant, the various decisions of the officers, of the United States in reference thereto, the litigation in regard thereto, and the Pelham and partial Julian surveys aforesaid, which occurred prior to the institution of said suit to quiet title, as hereinbefore set out, and well knew that the Town of Las Vegas was then the owner and claimed to be the owner of said tract of land known as the Las Vegas Grant, including the said tract of land in the petition in this action described.

(22) These respondents state, on information and belief, that prior to the time of the making of the Las Vegas Grant to the Town of Las Vegas, as aforesaid, there was a corporation existing under the laws of Mexico, known as the Ayuntamiento, or Town
107 Council of San Miguel del Bado, and that such Ayuntamiento had an Alcalde and all the other officers recognized by the

laws of Mexico as be'nging or appertaining to an Ayuntamiento, or municipal governn nt. Immediately upon the making of the Las Vegas Grant as aforesaid and the creation thereby of the Town of Las Vegas, said Town of Las Vegas was placed under the jurisdiction of the said Ayuntamiento of San Miguel del Bado, and said Ayuntamiento assumed municipal control and management of the said Town of Las Vegas. Thereafter the said Town of Las Vegas increased in population to such an extent that it was entitled, under the laws of Mexico, to an Alcalde or Justice of the Peace, and such officer, under the laws of Mexico, was duly selected and entered upon the discharge of his duties. At the time of the cession of New Mexico to the United States, such Alcalde, or Justice of the Peace for the Town of Las Vegas and the Ayuntamiento of San Miguel del Bado aforesaid, were in full and complete political control of the said Town of Las Vegas. After the cession of New Mexico to the United States and the change of sovereignty, the legal duties of Alcaldes and Justices of the Peace were so changed as to prevent such officers from continuing the political control, management and representation of the Town of Las Vegas, and no officers were provided by law, after such change of sovereignty, who had authority to continue in the control, management or representation of the said Town of Las Vegas or of the Ayuntamiento of San Miguel del Bado; and at the time of the institution of the said cause, No. 4512, on the docket of this Court, there was no representative of the said
108 Town of Las Vegas, upon whom legal process could be served, nor was there any such representative until the — day of ——, 1902, when the Board of Trustees of the Town of Las Vegas, respondents herein, was appointed.

(23) That neither respondents nor the said Town of Las Vegas was a party to said suit to quiet title in the petition in this action set out, and in said suit no process was issued against, nor was any served upon said Town of Las Vegas or the respondents herein.

(24) That the respondents herein, the Board of Trustees of the Town of Las Vegas, consisting of the said individual trustees, are the representatives of the Town of Las Vegas, confirmee and patentee of said Las Vegas Grant, as aforesaid, and are vested with the control and management of all the land aforesaid, and as the representatives of said town, subject to the directions of the said District Court aforesaid, have the control of said tract, as hereinbefore averred; and said respondents had no knowledge of the existence of the proceedings and decree in said cause No. 4512, until the petitioners made demand for a deed as set forth in the petition herein.

Wherefore, these respondents pray that the decree of this Court entered in said cause, No. 4512, a copy of which is attached to the petition filed herein and marked Exhibit "A," be vacated, set aside and annulled in so far as the same affects or purports to affect the title to the Town of Vas Vegas and these respondents in and to the land and real estate described in the petition filed herein, and that the title of the Town of Las Vegas and these respondents representing such town, in and to said lands and real estate, may be quited and

set at rest, and that said petitioners herein be debarred of all
109 right, title, claim or interest in or to the said lands and real estate, and that complainants be debarred and estopped from having or claiming any right, title or interest in or to the said lands and real estate; that said petitioners may be decreed to pay the costs of this proceeding and that these respondents may have such other and further relief in the premises as shall seem meet and agreeable to equity.

THE BOARD OF TRUSTEES OF THE TOWN OF LAS VEGAS AND THE INDIVIDUAL MEMBERS THEREOF,
By JEFFERSON RAYNOLDS, *President.*

Messrs. JONES AND ROGERS,
E. V. LONG,
CHAS. A. SPIESS,
S. B. DAVIS, JR., AND
LOUIS C. ILFELD,
Las Vegas, New Mexico,
Att'ys for Respondents.

TERRITORY OF NEW MEXICO,
County of San Miguel, ss:

Jefferson Raynolds, being first duly sworn, deposes and says:—that he is the President of The Board of Trustees of the Town of Las Vegas, as respondents in the above entitled cause; that he has read the above and foregoing answer by him subscribed and knows the contents thereof, and that the same is true of his own knowledge.

JEFFERSON RAYNOLDS.

Subscribed and sworn to before me this 12th day of January, A. D. 1907.

[N. P. SEAL.] EDW. J. McWENIE,
Notary Public.

110 EXHIBIT "D."

TERRITORY OF NEW MEXICO,
County of San Miguel, ss:

In the District Court of the Fourth Judicial District of the Territory of New Mexico, Sitting in and for the County of San Miguel for the Trial of Causes Arising under the Laws of the Territory, at the First Return Day for Said Court in September, A. D. 1894.

To the Honorable Thomas Smith, Chief Justice of the Supreme Court of the Territory of New Mexico and ex-Officio Judge of Said District Court, in Chancery Sitting:

Your orators, George E. Priest, Melvin W. Quick, and Charles M. Benjamin, residents of the City of Ithaca, in the State of New York,

bring this their bill of complaint against John H. Teitlebaum, and Lena J. Teitlebaum, his wife, residents of Las Vegas, San Miguel County, New Mexico; Adolph Teitlebaum, a resident of Atlanta, in the State of Georgia; The Fairview Town Company, a corporation organized under the laws of the Territory of New Mexico, and heretofore doing business at Las Vegas in the County of San Miguel in the Territory of New Mexico, the unknown successors in interest and unknown assigns of the said Fairview Town Company; James J. Fitzgerrell and Maria E. Fitzgerrell, his wife, whose place of residence is to your orators unknown, and all the unknown claimants of interests in the premises and lands hereinafter described adverse to your orators, and thereupon your orators complain and show unto your honor.

That your orators are the owners in fee simple and the
111 present occupants and possessors of that certain tract of land, situate, lying and being in the County of San Miguel and Territory of New Mexico, and bounded and described as follows, towit:

Beginning at a point on the east bank of the Arroyo Pecos 19.17 chains west of the southeast corner of Section 23, in Township 16, north of Range 16 East; said point being marked with a blue limestone rock 6″ x 6″ x 18″ set in the ground and with a small triangle cut on the top, running thence south 3 degrees 40′ west 5.93 chains;

Thence south 52 degrees east 36.50 chains;

Thence south 33 degrees east 81.90 chains;

Thence south 26 degrees east 37.46 chains;

Thence south 58 degrees east 12 chains;

Thence south 48 degrees and 30′ east 10.70 chains;

Thence east 66 chains;

Thence north 212.18 chains;

Thence west 155.16 chains, more or less to the Arroyo Pecos;

Thence following the Arroyo Pecos to the place of beginning by the following meanderings:

South 34 degrees 15′ west 20 chains;

Thence south 7 degrees west 18 chains;

Thence south 5 degrees and 15′ east 8 chains;

Thence south 8 degrees west 5.57 chains to the place of beginning.

That the said tract of land lies within the exterior boundaries of that certain grant of land made by the Government of Mexico in the year A. D. 1835, to Juan de Dios Maese and others, and known as the Las Vegas Grant, the said grant, as your orators are informed
and believe, being made by the Mexican Government to the
112 said Juan de Dios Maese and others for the use and benefit of the inhabitants and settlers of the Town of Las Vegas.

That the said grant of land made by the Mexican Government to Juan de Dios Maese and others, was known in the archives of the Surveyor General of New Mexico, as private land claim Number twenty (20), and as such was, on June 21, 1860, duly confirmed by Act of Congress of the United States to the Town of Las Vegas, and

thereby became segregated from the public domain of the United States.

That the said tract of land hereinbefore described as belonging to your orators was taken possession of by them and their grantors under and by virtue of the terms and provisions of the said Las Vegas Grant, and the laws of the Territory of New Mexico applicable thereto, more than ten years prior to the commencement of this suit; and that they and their said grantors, through whom they claim title, and from whom they have deeds of conveyance, have been in the actual, exclusive, open, notorious uninterrupted and adverse possession, under claim of title, of the said tract of land and premises and each and every part thereof, and no claim by suit at law or in equity, effectually prosecuted has been set up or made to the said tract of land, or any part thereof, within the aforesaid time of more than ten years, next preceding the commencement of this suit; and that in consequence of such actual, exclusive, open, notorious, uninterrupted and adverse possession, under claim of title of the said tract of land and every part thereof for more than said period of ten years, your orators are entitled to keep and hold in their possession the said tract of land in preference to all and against all, and all manner of person or persons whatsoever,
113 and have a good and indefeasible title, in fee simple, to the same, and are entitled to enjoy the same free from any trouble, hindrance, delay, or obstruction on the part of anyone.

That your orators are credibly informed and believe that the defendants John H. Teitlebaum, Lean J. Teitlebaum, Adolph Teitlebaum, the Fairview Town Company, James J. Fitzgerrell and Maria E. Fitzgerrell, make some claim adverse to the estate of your orators, but what the nature and extent of their said claim is, if any, your orators are unable to state.

That your orators are credibly informed and believe that certain unknown successors and assigns of the Fairview Town Company also make some claim of interest and title in and to the said tract of land, adverse to your orators, but the nature and extent of their said claim and interest is also to your orators unknown.

That your orators are credibly informed and believe that certain unknown persons, designated in this bill as "Unknown Claimants of interest in the premises adverse to your orator's" also make some claim of interest and title in and to the said tract of land adverse to the estate of your orators, but what the nature and extent of the said claim of said unknown persons in and to the said tract of land is likewise to your orators unknown.

Your orators represent unto your Honors that all of the said claims and pretenses on the part of each and every of the said defendants, known and unknown, of title and interest in and to the said tract of land, claimed and owned by your orators, and hereinbefore fully described, and adverse to the estate of your
114 orators, *and* of no avail against the title of your orators, and constitute a cloud upon the title of your orators.

In consideration of the premises, and inasmuch as your orators are without adequate remedy by the strict rules of the common law,

they, as required by law, apply to your Honor's Court in Chancery, where such matters are properly cognizable and relievable, and pray that the said John H. Teitlebaum, and Lena J. Teitlebaum, his wife, Adolph Teitlebaum, the Fairview Town Company, the Unknown successors in interest and unknown assigns of the said Fairview Town Company, James J. Fitzgerrell, and Maria E. Fitzgerrell, his wife, and all the unknown claimants of interest in the lands and premises hereinbefore described adverse to your orators, be made parties defendant to this bill of complaint with proper process to bring them before the Court, and that they and each of them be compelled to answer all and singular, the premises and allegations aforesaid, but not under oath, an answer under oath being hereby expressly waived; that upon the final hearing of the said cause, the premises being found for your orators, they pray that their title and estate in and to the whole of the said tract of land and real estate, hereinbefore described, be established as the estate and property of your orators, in fee simple title, free from and against any and all claims whatsoever of the said defendants or any or either of them; and that each and all and every of the said defendants be barred and forever estopped from having or claiming any right or title in and to the said premises and tract of land hereinbefore described, adverse to your orators, and that your orators' title thereto, to the whole of the said tract of land, be forever quieted and
115 set at rest, and that your orators may have such other and further relief in the premises as equity may require and to your Honor shall seem meet and proper.

May it please your honor to grant unto your orators the writ of subpœna in chancery directed to the said defendants and each and every of them, who are hereby made parties defendant to this bill of complaint, commanding them and each and every of them to be, and appear before this honorable Court to be held at the Town of Las Vegas in the County of San Miguel aforesaid on the first Monday of September, the same being the 3rd day of September, A. D. 1894, then and there to answer, all and singular, the premises aforesaid, and to stand to, and abide by such order, direction and decree therein, as to your Honor shall seem meet. And your orators in duty bound will ever pray, etc.

GEORGE E. PRIEST,
MELVIN W. QUICK,
CHARLES M. BENJAMIN,
Complainants.

VEEDER & VEEDER, of Las Vegas, N. M.,
Solicitors for Complainants.

(Endorsed:) No. 4512. District Court San Miguel County. George E. Priest, et als., vs. John H. Teitlebaum, et als. Bill of Complaint. Veeder & Veeder, of Las Vegas, Solicitors for Compt's. Filed in my office this July 19, 1894. Felix Martinez, Clerk.

116 In the District Court of the Fourth Judicial District, San Miguel County.

GEORGE E. PRIEST et als.
vs.
JOHN H. TEITLEBAUM et als.

TERRITORY OF NEW MEXICO,
County of San Miguel, ss:

John D. W. Veeder, being duly sworn, upon his oath states that he is the agent for George E. Priest, Melvin W. Quick and Charles M. Benjamin, the complainants in the above entitled cause; that James J. Fitzgerrell and Maria Fitzgerrell, his wife, two of the defendants in the above entitled cause are not residents of the Territory of New Mexico, and their present place of residence and their whereabouts are to this affiant unknown; that the place of residence is unknown and the whereabouts cannot be discovered of any and all of the Unknown Successors in interest and unknown assigns of the defendant, the Fairview Town Company; and that the place of residence is unknown and the whereabouts cannot be discovered of any and all of the defendants designated as Unknown Claimants of Interests in the Premises and Lands described in the Bill of Complaint, who claim adversely to the complainants, George E. Priest, Melvin W. Quick and Charles M. Benjamin.

(Signed) JOHN D. W. VEEDER.

Subscribed and sworn to before me this 19th day of July, A. D. 1894.

[SEAL.] ELMER E. VEEDER,
Notary Public.

117 (Endorsed:) No. 4512. District Court, San Miguel County. George E. Priest et als. vs. John T. Teitlebaum et als. Affidavit for service by publication. Veeder & Veeder, of Las Vegas, N. M., Solicitors for Complainants. Filed in my office July 19th, 1894. Felix Martinez, Clerk.

In the District Court, County of San Miguel, September Term, A. D. 1894.

No. 4512.

GEORGE E. PRIEST et als.
vs.
JOHN H. TEITLEBAUM et als.

The said defendants, John H. Teitlebaum, Lena J. Teitlebaum, his wife, Adolph Teitlebaum, the Fairview Town Company, the Unknown Successors in interest and unknown assigns of the said

Fairview Town Company, James J. Fitzgerrell, and Maria E. Fitzgerrell, his wife, and the unknown claimants of interests in the lands and premises, hereinafter described adverse to the complainants, are hereby notified that a Suit in Chancery has been commenced against you, and each of you, in the District Court for the County of San Miguel, Territory of New Mexico, by the said complainants, George E. Priest, Melvin W. Quick and Charles M. Benjamin.

The said complainants in their bill of complaint ask the Court by its decree to establish and confirm to them their title in
118 fee simple in and to the lands and premises mentioned and described in said bill of complaint as follows, to wit:

Beginning at a point on the east bank of the Arroyo Pecos, 19.17 chains west of the southeast corner of Section 23, in Township 16 north of Range 16 east, said point being marked with a blue lime-stone rock 6″ x 6″ x 18″ set in the ground and with a small triangle cut on the top;

Thence running south 3 degrees 40′ west 5.93 chains;
Thence south 52 degrees east 36.50 chains;
Thence south 33 degrees east 21.90 chains;
Thence south 28 degrees east 37.46 chains;
Thence south 58 degrees east 12 chains;
Thence south 48 degrees 30′ east 10.70 chains;
Thence east 66 chains;
Thence north 212.18 chains;
Thence west 55.16 chains; more or less, to the Arroyo Pecos;

Thence following the Arroyo Pecos to the place of beginning, by the following meanderings:

S. 34 degrees and 15′ west 20 chains;
Thence south 7 degrees west 18 chains;
Thence south 5 degrees and 15′ east 8 chains;

Thence south 8 degrees west 5.57 chains to the place of beginning, free from and against any and all claim whatsoever of the said defendants or any or either of them or any adverse claim of said defendants, or any or either of them, and that each and all and every of the said defendants be barred and forever estopped from having or claiming any right or title in and to the said premises and tract of land hereinbefore described adverse to the complain-
119 ants, and that the title of complainant- thereto, to the whole of the said tract of land be forever quieted and set at rest.

That unless you enter or cause to be entered your appearance in said suit in the office of the clerk of the District Court of San Miguel County, on or before the 3rd day of September, A. D. 1894, a decree pro confesso therein will be entered against you.

FELIX MARTINEZ, *Clerk.*

VEEDER & VEEDER,
Solicitors for Complainants.

(The above and foregoing was also published in the Spanish language.)

TERRITORY OF NEW MEXICO,
County of San Miguel, ss:

I, Enrique H. Salazar, of said County of San Miguel, being duly sworn, say, that I am the Publisher of "El Independiente," a weekly newspaper, printed and published at Las Vegas, in the county and territory aforesaid; and that the notice, of which the annexed is a true copy, has been published in said weekly newspaper in its issue of July 21st, 28th, August 4th and 11th.

E. H. SALAZAR,
Publisher.

Sworn to and subscribed before me this 13th day of August, 1894.
[SEAL.] CHARLES F. RUDOLPH,
Probate Clerk.

120 (Endorsed:) No. 4512. District Court, San Miguel County. George E. Priest et als. vs. John H. Teitlebaum et als. Proof of service by publication. Filed in my office this September 6th, 1894. Felix Martinez, Clerk.

TERRITORY OF NEW MEXICO,
Fourth Judicial District,
County of San Miguel:

No. 4512.

GEORGE E. PRIEST et als.
vs.
JOHN H. TEITLEBAUM et als.

I, Clerk of said Court, and Register in Chancery, certify that no appearance, by or for the defendants in the above entitled cause, has been entered in my office or of record, and that said defendants have been duly served with process, by publication and personal service to appear 1st Monday of September 1894.

Witness my hand and the seal of said Court this 6th day of September, 1894.

[SEAL.] FELIX MARTINEZ,
Clerk & Register.

(Endorsed:) No. 4512. District Court, County of San Miguel. George E. Priest et als. vs. John H. Teitlebaum et als. Certificate of No Appearance. Filed in my office this Sep. 6th, 1894. Felix Martinez, Clerk. Veeder & Veeder, Solicitors for Complainants.

121 In the District Court of the Fourth Judicial District, San Miguel County.

No. 4512.

GEORGE E. PRIEST et als.
vs.
JOHN H. TEITLEBAUM et als.

This cause coming on to be heard before the Judge of said Court at Chambers, in Las Vegas, New Mexico, in the presence of counsel for the complainants, and it appearing to the Court that the subpœnas issued in said cause were duly served upon the defendants named, and that all the defendants were properly before the Court, and that the time for appearance by the defendants has long since expired and no appearance has been entered in said cause for any or either of them, on motion of the solicitor for the complainants:

It is ordered by the Court that the bill of complaint in said cause be and the same is hereby taken as confessed by the said defendants and each of them.

(Signed) THOMAS SMITH,
Chief Justice, etc.

Dated Las Vegas, Sept. 12, 1894.

(Endorsed:) No. 4512. District Court, San Miguel County. George E. Priest et als. vs. John H. Teitlebaum et als. Decree pro confesso. Filed in my office this September 13th, 1894. Felix Martinez, Clerk.

See Rec. I. P. 378.

122 (Said counter-claim being endorsed as follows:) No. 6220. District Court, San Miguel County. Ex Parte George E. Priest et al. vs. Board of Trustees, etc. Counter-claim. Filed in my office Jan. 29th, 1907. Secundio Romero, Clerk. Jones and Rogers, C. A. Spiess, S. B. Davis, Jr., E. V. Long, L. C. Ilfeld, Att'ys for Respondents, Las Vegas, N. M.

And afterwards, to wit, on January 29th, 1907, there was filed in said clerk's office a motion of relators, in words and figures as follows, to wit:

TERRITORY OF NEW MEXICO,
County of San Miguel:

In the District Court.

No. 6220.

Ex Parte GEORGE E. PRIEST et als.

Now come the relators and petitioners herein and move the Court to strike from the files the answer and return of the respondents,

filed the 29th day of January, A. D. 1907, and each and every paragraph thereof, for the following reasons, to wit:

1. Because the said answer and return and each and every paragraph thereof is made up wholly of irrelevant and redundant matter.

123 2. Because the said answer and return and each and every paragraph thereof and the matters and things therein averred are for the sole purpose of impeaching the judgment and decree of this court, which is the basis of the relators' right to a mandamus herein.

3. Because the said judgment and decree of this Court in favor of the relators herein, is conclusive upon the respondents and cannot be impeached in a collateral proceeding, such as the present.

4. Because the said answer and return of the respondents fails in all respects to conform to the requirements of law, respecting pleading.

5. Because the said answer and return and the matters and things therein averred, constitute no defense to the issuance of the writ herein.

VEEDER & VEEDER,
Attorneys for Relators and Petitioners.

(Endorsed:) No. 6220. District Court, San Miguel County. Ex-Parte, George E. Priest, Melvin W. Quick and Charles M. Benjamin. Motion to strike from files answer and return of respondents. Filed in my office Jan. 29th, 1907. Secundio Romero, Clerk. Veeder and Veeder, Las Vegas, N. M., Att'ys for relators.

And afterwards, towit, on January 29th, 1907, there was
124 filed in said clerk's office an order of the Court overruling motion to strike from files the answer and return of respondents, in words and figures as follows, towit:—

TERRITORY OF NEW MEXICO,
County of San Miguel:

In the District Court.

No. 6220.

EX PARTE GEORGE E. PRIEST et als.

This cause coming on to be heard before the Court at Chambers, upon the motion of the relators and petitioners herein to strike from the files of the Court the said answer and return of respondents filed 29th day of January, 1907, for the reasons set out in said motion, and after hearing counsel for both relators and respondents and being fully advised in the premises:—

It is hereupon ordered and adjudged by the Court, that the said motion be and the same hereby is overruled.

To which said order and ruling of the Court, the said relators then and there excepted.

WILLIAM J. MILLS,
Chief Justice, etc.

Dated at Las Vegas, January 29th, 1907.

(Endorsed:) No. 6220. District Court, San Miguel County. Ex-Parte, George E. Priest, Melvin W. Quick, Charles M. Benjamin. Order of Court overruling motion to strike from files answer and return of respondents. Filed in my office Jan. 29, 1907.
125 Secundino Romero, Clerk. Ent. Rec. N. p. 233.

And afterwards, towit, on January 29th, 1907, there was filed in said clerk's office a demurrer, in words and figures as follows, towit:—

TERRITORY OF NEW MEXICO,
County of San Miguel:

In the District Court.

No. 6220.

Ex Parte GEORGE E. PRIEST et als.

Now comes the said relators and petitioners in the above entitled cause by their attorneys and demur to the answer and return of the said respondents filed herein on the 29th day of January, A. D. 1907, upon the following grounds and for the following reasons, towit:—

1. Because the said answer and return and each and every paragraph thereof do not state facts sufficient to constitute a defense to the issuance of the writ asked for in the petition filed herein.

2. Because the said answer and return and each and every paragraph thereof, constitute an attempt to impeach the judgment and decree of the Court relied upon for the issuance of the writ herein, in a collateral proceeding.

3. Because the judgment and the decree of the Court re-
126 lied upon herein, is an adjudication of all the matters and things set out in the said answer and return of respondents, and each and every paragraph thereof, and such judgment and decree is conclusive upon the said respondents and cannot be attacked in this collateral proceeding.

Wherefore, the said relators pray judgment of the Court whether they shall be required to make reply to the said answer and return of respondents, otherwise than aforesaid.

VEEDER & VEEDER,
Attorneys for Relators and Petitioners.

(Endorsed:) No. 6220. District Court, San Miguel County. Ex-Parte, George E. Priest, et als. Demurrer. Filed in my office Jan. 29, 1907. Secundino Romero, Clerk.

And afterwards, towit, on January 30th, 1907, there was filed in said clerk's office, an order of the Court overruling the demurrer of the relators to the answer and return of respondents in words and figures as follows, towit:—

TERRITORY OF NEW MEXICO,
County of San Miguel:

In the District Court.

No. 6220.

Ex Parte GEORGE E. PRIEST et als.

This cause coming on to be heard before the Court upon
127 the demurrer of the relators and petitioners herein, to the answer and return of the respondents, filed in this cause, on the 29th day of January, A. D. 1907, and after hearing counsel for the respective parties and being fully advised in the premises:—

It is accordingly ordered and adjudged by the Court that the said demurrer to said answer and return be and the same hereby is overruled.

To which order and ruling of the Court the said relators and petitioners, by their attorneys then and there excepted.

WILLIAM J. MILLS,
Chief Justice, etc.

Dated, Las Vegas, New Mexico, January 30th, 1907.

(Endorsed:) No. 6220. District Court, San Miguel County. Ex-Parte, George E. Priest, et als. Order of Court overruling demurrer of relators to answer and return of respondents. Filed in my office Jan. 30th, 1907. Secundino Romero, Clerk. Ent. Rec. N. page 233.

And afterwards, towit, on January 30th, 1910, there was filed in said clerk's office a reply of relators to answer and return of respondents, in words and figures as follows:—

128 TERRITORY OF NEW MEXICO,
County of San Miguel:

In the District Court.

No. 6220.

Ex Parte GEORGE E. PRIEST et als.

Now come the relators and petitioners in the above entitled proceeding and make reply to the answer and return of the respondents

filed in said cause, on the 29th day of January, 1907, and for reply to said answer and return, state:—

1. For reply to paragraphs 1 and 2 of the said answer and return, they herein again aver as in said petition.

2. In reply to paragraph 3 of the said answer and return, they likewise again aver as in said petition in reference to the estate held by them and confirmed to them under and by virtue of the said proceeding to quiet title and the decree of the Court made and entered therein.

3. In reply to paragraph 4 of the said answer and return of respondents, these relators admit that the said land and real estate claimed by them and described in their petition herein lies within the exterior boundaries of that certain tract of land and real estate, known and called the Las Vegas Grant, but they deny that it is a part and portion of said grant or that the Board of Trustees of said grant claim and hold the unoccupied portions of said grant.

4. In reply to paragraphs 5, 6, 7 and 8, they admit the same to be true.

5. In reply to paragraph 9 of the said answer and return
129 of respondents, they admit the same to be true, except the averment in said paragraph contained that the said survey, known as the Pelham survey was not approved by the Commissioner of the General Land Office or the Secretary of the Interior, which they deny and aver the fact to be that the said survey was not only duly approved by the Surveyor General but also by the Commissioner of the General Land Office and Secretary of the Interior.

6. In reply to paragraphs 10, 11, 12, 13, 14, 15 and 16, they admit the same to be true.

7. In reply to paragraph 17 of the said answer and return of respondents, relators admit the same except in so far as it is in said paragraph stated that the said Millhiser and his associates in the proceeding therein referred to represented the said Town of Las Vegas. To the contrary they aver the fact to be that the said Millhiser and his associates claimed to be the successors and assigns of the original grantees named in the said petition for the said Las Vegas Grant and distributees under said grant prior to the treaty of Guadalupe Hidalgo, and the lawful confirmees under the Act of Congress, confirming the said Las Vegas Grant to the Town of Las Vegas. They further aver that with the exception of the single attempt on the part of Surveyor General Julian to restrict the area of the said Las Vegas Grant, and the proceedings brought in the District Court of the District of Columbia to restrain the said survey, the entire litigation with reference to the Las Vegas grant, turned upon the question as to who were the grantees or proper claimants under the said Act of Confirmation, there being during
130 all this period of time no such legal entity or incorporation known as the Town of Las Vegas and no person, persons, official or corporate body authorized to represent said Town of Las Vegas. That the claim on the part of some was that the inhabitants of the Town of Las Vegas, at the time the Act of confirmation was passed, were the owners of the said Las Vegas Grant,

and upon the part of others, the claim was made that the original petitioners for said grant and the parties who had received allotments under them down to the date of the treaty of Guadalupe Hidalgo, were the true owners of the Las Vegas Grant. On the part of still others, the claim was made that the original petitioners, whose names were mentioned in the petition for the Las Vegas Grant, were the true owners of it. Each of these several groups of claimants maintained that they were the real parties in interest and the rightful confirmees under the said Act of Congress.

8. In reply to paragraph 18, relators admit the same.

9. In reply to paragraph 19, relators admit the same with respect to the original Pelham survey and the survey made by Johnson, but deny said paragraph with reference to the partial survey made under the recommendation of Julian, because the same was never perfected and hence no determination of the outlying boundaries under that survey was ever made.

10. In reply to paragraph 20, of the said answer, relators, admit the same.

11. In reply to paragraph 21 of the said answer, relators deny that at the time of the institution and carrying on of the said suit to quiet title, and at the time of the rendition of the decree in
131 said suit, these relators, as plaintiffs, in said action, or their representatives, knew all of the facts in said answer alleged, or any considerable portion of such facts outside of the proceedings before the Surveyor General to obtain a confirmation of the said Las Vegas Grant, the Act of Confirmation, and the original survey, known as the Pelham survey, and deny that they knew that the Town of Las Vegas was then the owner and claimed to be the owner of a tract of land known as the Las Vegas Grant. To the contrary they aver the fact to be, that prior to and during the progress of the said suit to quiet title, there never had been nor was in existence any confirmee, known as the Town of Las Vegas, meaning thereby any incorporated community bearing such name, and because of the lack of existence of any such town, relators could not have known that such an entity was either the owner of or claimed the said grant. They aver, however, that they did know that the inhabitants of the Town of Las Vegas, at the date of said Act of Confirmation, were the owners and claimants of interests in the Las Vegas Grant, that is the inhabitants of the unincorporated community commonly designated as the Town of Las Vegas, both at the time of the institution of said suit and during the pendency of it but who or how many such inhabitants there were and their whereabouts, was at said time unknown, both to the relators herein and plaintiffs in said actcion and their representatives.

12. Replying to paragraph 22, of said answer and return, relators admit the same and aver further that the said Town of Las Vegas was not an incorporated town, either at the date of said confirmation, or at any time subsequent thereto. They deny, how-
132 ever, that because of this, legal process could not be served by publication under the statutes of New Mexico, against the

inhabitants of the said Town of Las Vegas, the real parties in interest and beneficiaries under the said Act of Confirmation.

13. As to the averments of paragraph 23 of said answer, they deny that neither respondents nor the said Town of Las Vegas were a party to said suit to quiet title in the petition in this action set out; and they deny that in said suit no process was issued against or served upon the said Town of Las Vegas, or the respondents herein.

14. Replying to paragraphs 24 and 25 of said answer, relators admit the same.

Wherefore, these relators pray for the relief asked for in their petition filed herein.

GEORGE E. PRIEST,
MELVIN W. QUICK,
CHARLES M. BENJAMIN,
Relators and Petitioners.

VEEDER & VEEDER, of Las Vegas, N. M.,
Attorneys for Relators.

TERRITORY OF NEW MEXICO,
County of San Miguel, ss:

John D. W. Veeder, being duly sworn, upon his oath deposes and says, that he is the agent and attorney of the relators in this case, and that he has read the foregoing reply of the said respondents and knows the contents thereof and that the same is
133 true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters, he verily believes them to be true.

JOHN D. W. VEEDER.

Subscribed and sworn to before me this 30th day of January, A. D. 1907.

[SEAL.] SECUNDINO ROMERO, *Clerk.*

(Endorsed:) No. 6220. District Court, San Miguel County. Ex-Parte, George E. Priest, Melvin W. Quick, Charles M. Benjamin. Reply of relators to answer and return of respondents. Filed in my office Jan. 30, 1907. Secundino Romero, Clerk. Veeder & Veeder, of Las Vegas, N. M., Attys. for Relators.

And afterwards, towit, on February 7th, 1907, there was filed in said clerk's office a motion of relators to strike from the files the counter claim and additional defense of respondents, in words and figures as follows, to-wit:—

TERRITORY OF NEW MEXICO,
County of San Miguel:

In the District Court.

No. 6220.

EX PARTE GEORGE E. PRIEST et als.

Now come the relators and petitioners in the above entitled
134 cause and move the Court to strike from the files the so-called "Counter-Claim," and "Additional Defense," filed in the said cause on the 29th day of January, A. D. 1907, upon the following grounds and for the following reasons, towit:—

1: Because the said pretended counter-claim and the matters and things therein contained constitute no defense to the issuance of the writ herein.

2. Because the said pretended counter-claim and additional defense, is in the nature of a bill in equity, for the purpose of removing a cloud from the title of the lands of the respondents as trustees of the Town of Las Vegas, and seeks affirmative relief by asking to have the decree and judgment of this Court, which is the foundation of the relators' right to a mandamus, vacated, set aside and annulled and the title of the Town of Las Vegas to the lands of the Las Vegas Grant, quieted and set at rest, and is not permissable either as a defense to a proceeding for mandamus or by way of cross-bill or counter-claim.

3. Because the said pretended counter-claim and additional defense, by way of a bill in equity, seeking affirmative relief, is unknown to mandamus proceedings.

4. Because there is no authority of law for filing the said pretended counter-claim and additional defense in the form of a cross-bill in a suit in equity.

5. Because the said pretended counter-claim and additional defense constitutes no lawful answer and return to relators' petition for mandamus herein.

VEEDER AND VEEDER,
Of Las Vegas, N. M.,
Attorneys for Relators.

135 (Endorsed:) No. 6220. District Court, San Miguel County. Ex-Parte, George E. Priest, et als. Motion of Relators, etc. Filed in my office Feb. 7th, 1907. Secundino Romero, Clerk. Veeder and Veeder, of Las Vegas, N. M., Attys. for Relators.

And afterwards, towit, on February 8th, 1907, there was filed in said clerk's office an order of court overruling the motion, in words and figures as follows, towit:—

TERRITORY OF NEW MEXICO,
County of San Miguel:

In the District Court.

No. 6220.

Ex Parte GEORGE E. PRIEST et als.

This cause coming on to be heard upon the motion of relators and petitioners in the above entitled cause to strike from the files of the Court the so-called counter-claim and additional defense, filed in said cause on the 29th day of January, A. D. 1907, upon the grounds set out in said motion:—

And after hearing the respective counsel for said relators and respondents, and being fully advised in the premises, it is now accordingly ordered by the Court that the said motion to strike out said counter-claim and additional defense be and the same hereby is overruled, to which said action of the Court the said relators
136 by their attorneys, then and there excepted.

WILLIAM J. MILLS,
Chief Justice, etc.

Dated at Las Vegas, N. M., February 8th, 1907.

(Endorsed:) No. 6220. District Court, San Miguel County. Ex-Parte, Geo. E. Priest, et als. Order overruling motion. Ent. Rec. N. page 245. Filed in my office Feb. 8th, 1907. Secundino Romero, Clerk.

And afterwards, towit, on February 9th, 1907, there was filed in said clerk's office a demurrer of the relators in words and figures as follows, towit:—

TERRITORY OF NEW MEXICO,
County of San Miguel:

In the District Court.

No. 6220.

Ex Parte GEORGE E. PRIEST et als.

Now come the said relators and petitioners in the above entitled cause, by their attorneys and demur to the so-called "counter-claim and additional defense," filed in the said cause, on the 29th day of January, A. D. 1907, upon the following grounds, and for the following reasons towit:—

137 1. Because the said pretended counter-claim and additional defense, so-called, and the matters and things therein contained, constitute no defense to the issuance of the writ herein.

2. Because the said pretended counter-claim and additional defense, is in the nature of a bill in equity, for the purpose of removing a cloud from the title of the lands of the respondents, as trustees of the Town of Las Vegas, and seeks affirmative relief by asking to have the decree and judgment of this Court, which is the foundation of the relators' right to a mandamus, vacated, set aside and annulled and the title of the Town of Las Vegas to these lands of the Las Vegas Grant quieted and set at rest, and is not permissable either as a defense to a proceeding for mandamus or by way of cross-bill or counter-claim, in a proceeding for mandamus.

3. Because the said pretended counter-claim and additional defense, by way of a bill in equity, seeking affirmative relief, is unknown to mandamus proceedings and unauthorized by the statutes of this Territory in a mandamus proceeding.

4. Because there is no authority of law for filing the said pretended counter-claim and additional defense in the form of a cross-bill in a suit in equity, in a mandamus proceeding.

5. Because the said pretended counter-claim and additional defense constitutes no lawful answer and return, either in form or substance, to relators' petition for mandamus herein.

6. Because the said pretended counter-claim and additional defense contains statements of irrelevant and redundant matter
138 and fails in all respects to conform to the requirements of law.

Wherefore, the said relators pray judgment of the Court whether they shall be required to make reply to the said pretended counter-claim and additional defense of respondents, otherwise than aforesaid.

VEEDER & VEEDER,
Attorneys for Relators and Petitioners.

(Endorsed:) No. 6220. District Court, San Miguel County. Ex Parte, George E. Priest, Melvin W. Quick and Charles M. Benjamin. Demurrer of Relators to counter-claim and additional defense. Veeder & Veeder, of Las Vegas, N. M., Att'ys for Relators. Filed in my office Feb. 9th, 1907. Secundino Romero, Clerk.

And afterwards, to wit, on February 9th, 1907, there was filed in said clerk's office an order of the Court overruling the demurrer of the relators, to the counter-claim and additional defense, in words and figures as follows, to wit:

TERRITORY OF NEW MEXICO,
County of San Miguel:

In the District Court.

No. 6220.

EX PARTE GEORGE E. PRIEST et als.

This cause coming on to be heard upon the demurrer filed
139 by relators and petitioners to the so-called counter-claim and additional defense, filed by the respondents in the above entitled cause on the 29th day of January, A. D. 1907:

And after hearing the respective counsel for said relators and respondents to said cause and being fully advised in the premises, it is now accordingly ordered by the Court that the said demurrer be and the same is hereby overruled, to which said action of the Court, the said relators, by their attorneys, then and there excepted.

WILLIAM J. MILLS,
Chief Justice, etc.

Dated at Las Vegas, N. M., this 9th day of February, A. D. 1907.

(Endorsed:) No. 6220. District Court, San Miguel County. Ex-Parte, George E. Priest, et als. Filed in my office Feb. 9th, 1907. Ent. in Rec. N. page 245.

And afterwards, to wit, on April 18th, 1907, there was filed in said clerk's office an answer of relators to the counter-claim of respondents, in words and figures as follows, to wit:

TERRITORY OF NEW MEXICO,
County of San Miguel:

In the District Court.

No. 6220.

EX PARTE GEORGE E. PRIEST et als.

140 Now come the relators and petitioners in the above entitled cause, and for answer to the pretended counter-claim of the respondents filed in this cause on the 29th day of January, A. D. 1907, state:

1. As to the averments of paragraph 1 of the said pretended counter-claim, they admit the same to be true.

2. As to the averments of paragraph 2 of said pretended counter-claim, they admit that the said relators and petitioners claim the effect of said proceedings in the District Court in cause No. 4512, to be as therein stated, and that they have a fee simple title to the

lands described in the said decree against the said respondents and all persons whomsoever.

3. As to the averments of paragraph 4 of the said pretended counter-claim, they admit that the said land and real estate described in relators' petition, filed herein, lies within the exterior boundaries of that certain tract of land and real estate known and called the Las Vegas Grant, but deny that it is a part and portion of said grant or that the respondents have any interest whatever in the same or have any title whatever thereto.

4. As to the averments of paragraphs 5, 6, 7, and 8 of the said pretended counter-claim, they admit the same to be true.

5. As to the averments of paragraph 9 of the said pretended counter-claim, they admit the same to be true, except the averment in said paragraph contained that the said survey, known as the Pelham survey was not approved by the Commissioner of the General Land Office or the Secretary of the Interior, which said averment they deny, and state the fact to be that the said survey was not only duly approved by the Surveyor General, but also by the
141 Commissioner of the General Land Office and the Secretary of the Interior.

6. As to the averments of paragraphs 10, 11, 12, 13, 14, 15 and 16, of the said pretended counter-claim, they admit the same to be true.

7. As to the averments of paragraph 17 of the said pretended counter-claim, they admit the same to be true, except in so far as it is in said paragraph stated that the said Millhiser and his associates in the proceeding therein referred to, represented the said Town of Las Vegas. To the contrary, they state the fact to be that the said Millhiser and his associates claim to be the successors and assigns of the original grantees named in the said petition for the said Las Vegas Grant and distributees under said grant prior to the Treaty of Guadalupe Hidalgo and the lawful confirmees under the act of Congress confirming the said Las Vegas Grant to the Town of Las Vegas. They further aver that with the exception of the single attempt on the part of Surveyor General Julian to restrict the area of the said Las Vegas Grant, and the proceeding brought in the District Court of the District of Columbia, to restrain the said survey, the entire litigation with reference to the Las Vegas Grant, turned upon the question as to who were the grantees or proper claimants under the said Act of Confirmation, there being during all this period of time no such legal entity or incorporation known as the Town of Las Vegas and no person, persons, official or corporate body authorized to represent said Town of Las Vegas. That the claim on the part of some was that the inhabitants of the Town of Las Vegas at the time that the Act of Confirmation was passed were the owners of the said Las Vegas Grant, and upon the part of others, the
142 claim was made that the original petitioners for said grant and the parties who had received allotments under them, down to the date of the Treaty of Guadalupe Hidalgo, were the true owners of the Las Vegas Grant. On the part of still others, the claim was made that the original petitioners, whose names were

mentioned in the petition for the Las Vegas Grant were the true owners of it. Each of these several groups of claimants maintained that they were the real parties in interest and the rightful confirmees under the said act of Congress.

8. As to the averments contained in paragraph 18 of the said pretended counter-claim, they admit the same to be true.

9. As to the averments in paragraph 19 of the said pretended counter-claim, they admit the same to be true with respect to the original Pelham survey, and the survey made by Johnson, but deny said paragraph with reference to the partial survey made under the recommendation of Julian, because the same was never completed and hence no determination of the out-lying boundaries of the Las Vegas Grant under that survey was ever made.

10. As to the averments in paragraph 20 of the said pretended counter-claim, they admit the same to be true.

11. As to the averments in paragraph 21 of the said pretended counter-claim, they deny that at the time of the institution and carrying on of the said suit to quiet title, these relators, as plaintiffs in said action or their representatives, knew all the facts in said answer alleged, or any considerable portion of such facts, outside of the proceedings before the Surveyor General to obtain a
143 confirmation of the said Las Vegas Grant, the act of confirmation and the original survey, known as the Pelham survey, and deny that they knew that the Town of Las Vegas was then the owner and claimed to be the owner of the tract of land known as the Las Vegas Grant. To the contrary they state the fact to be that prior to and during the progress of the said suit to quiet title, there never had been, nor was in existence any confirmee, known as the Town of Las Vegas, meaning thereby any incorporated community bearing such name and because of the lack of existence of any such town, relators could not have known that such an entity was either the owner of or claimed the said grant. They aver, however, that they did know that the inhabitants of the community called the Town of Las Vegas, at the date of said act of confirmation, were the owners and claimants of interests in the Las Vegas Grant, that is the inhabitants of the unincorporated community, commonly designated as the Town of Las Vegas, both at the time of the institution of said suit and during the pendency of it, but who or how many such inhabitants there were and their whereabouts, was at said time unknown both to the relators herein and plaintiffs in said action, and their representatives.

12. As to the averments of paragraph 22 of the said pretended counter-claim, they state that they do not know who, prior to the cession of New Mexico to the United States and the change of sovereignty and political control of the said Town of Las Vegas, or the lands of the Las Vegas Grant, and therefore leave respondents to make such proof of the same as they may be advised is mate-
144 rial and necessary. They aver, however, that the said Town of Las Vegas, was not an incorporated town, either at the date of the act of confirmation, or at any time subsequent thereto.

They deny, however, that because of this, legal process could not be served by publication under the statutes of New Mexico, against the inhabitants of the said Town of Las Vegas, the real parties in interest and beneficiaries under the said act of confirmation.

13. As to the averments of paragraph 23 of the said pretended counter-claim, they deny that neither respondents nor the said Town of Las Vegas were a party to said suit to quiet title in the petition in this action set out, and they deny that in said suit no process was issued against or served upon the said Town of Las Vegas or the respondents herein.

14. As to the averments of paragraph 24 of the said pretended counter-claim, they admit the same to be true in so far as the duties of the said Board of Trustees are therein set forth, but they deny that the said respondents, the Board of Trustees of the Town of Las Vegas, had no knowledge of the existence of the proceedings and decree in said cause No. 4512 until the relators and petitioners herein made demand for a deed as set forth in the petition herein.

Wherefore, these relators pray to be hence dismissed with their reasonable costs in this behalf sustained.

GEORGE E. PRIEST,
MELVIN W. QUICK,
CHARLES M. BENJAMIN,
Relators and Petitioners.

VEEDER & VEEDER,
Las Vegas, New Mexico,
Attorneys for Relators.

145 TERRITORY OF NEW MEXICO,
County of San Miguel, ss:

John D. W. Veeder, being duly sworn, upon his oath deposes and says: that he is the agent and attorney for the relators in this case; that he has read the foregoing answer of the said relators and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to these matters, he verily believes them to be true.

JOHN D. W. VEEDER.

Subscribed and sworn to before me this 18th day of April, A. D. 1907.

[SEAL.] TISHA HENRY,
Notary Public.

(Endorsed:) No. 6220. District Court, San Miguel County. Ex Parte George E. Priest, Melvin W. Quick and Charles M. Benjamin. Answer of relators to counter-claim of respondents. Veeder and Veeder, of Las Vegas, N. M., Attorneys for Relators. Filed in my office, April 18th, 1907. Secundino Romero, Clerk.

And afterwards, to wit, on June 7th, 1907, there was filed in said clerk's office a motion to strike out certain portions of the
146 answer (called cross-complaint) of respondents, which said motion is in words and figures as follows, to wit:

(This motion cannot be found in the files.)

At a Regular Term of the District Court of the Fourth Judicial District of the Territory of New Mexico, Held Within and for the County of San Miguel, at the Court House of said County, in the Town of Las Vegas, New Mexico, Commencing on the 3rd Monday of May, the Same Being May 20th, 1907, for the Trial of Causes Arising under the Laws of the Territory of New Mexico.

Present:

Hon. William J. Mills, Chief Justice, etc.
Hon. S. B. Davis, Jr., District Attorney.
Hon. Cleofes Romero, Sheriff, San Miguel County.
Secundino Romero, Clerk.

And afterwards, to wit, on Friday, June 7th, 1907, the same being the 12th day of said term of court, the following among other proceedings were had to wit:

No. 6220.

Ex Parte George E. Priest et als.

Mandamus.

Come now the parties in the above entitled cause, Messrs. Veeder and Veeder appearing as attorneys for the petitioners therein and Messrs. Jones & Rogers, Charles A. Spiess, S. B. Davis, Jr.,
147 E. V. Long and Louis C. Ilfeld, representing the respondents therein as their counsel, and the motion to strike out certain portions of the answer of the respondents heretofore filed by petitioners is now argued before the court, and being fully advised and informed in the premises:

It is therefore considered, ordered and adjudged by the Court that the motion of the petitioners in the above said action to strike out certain portions of respondents' answer be and the same is hereby sustained as to paragraph Number One (1), and Three (3) of said motion, and overruled as to paragraph numbered two (2) thereof.

And afterwards, on August 21st, 1907, there was filed in said clerk's office respondents' reply, in words and figures as follows, to wit:

TERRITORY OF NEW MEXICO,
County of San Miguel:

In the District Court.

No. 6220.

EX PARTE GEORGE E. PRIEST et als.

Comes now the Board of Trustees of the Town of Las Vegas, respondents herein, and by leave of the Court first had and obtained, files as of this 21st day of August, 1907, and prior to the beginning of the trial of this cause, its reply to the answer of the petitioner to the counter-claim of these respondents, and thus replying states:

1. Said respondent denies, upon information and belief,
148 the last clause of paragraph two of said answer, wherein it is stated that the relators and petitioners claim to have a fee simple title to the lands described in the said decree against the said respondents and all persons whomsoever.

2. Said respondent, upon information and belief, denies that portion of paragraph seven of said answer as follows: "There being, during all this period of time, no such legal entity or incorporation known as the Town of Las Vegas."

3. Upon information and belief this respondent denies all of the affirmative averments of paragraph eleven of said answer.

4. Upon information and belief this respondent denies the statement contained in paragraph twelve of said answer.

THE BOARD OF TRUSTEES OF THE
TOWN OF LAS VEGAS AND THE
INDIVIDUAL MEMBERS THEREOF,
By JEFFERSON RAYNOLDS, *President.*

Messrs. Jones and Rogers, E. V. Long, Charles A. Spiess, S. B. Davis, Jr., and Louis C. Ilfeld, New Mexico, Att'ys for Respondents.

TERRITORY OF NEW MEXICO,
County of San Miguel, ss:

Jefferson Raynolds, being first duly sworn, deposes and says: That he is the President of the Board of Trustees of the Town of Las Vegas, as respondent in the above entitled cause; that he has read the above and foregoing reply by him subscribed and
149 knows the contents thereof and that the same is true of his own knowledge.

JEFFERSON RAYNOLDS.

Subscribed and sworn to before me this 21st day of August, 1907.

[SEAL.]

W. H. UNGLES,
Notary Public.

150 And afterwards, to wit, on the 26th day of February, 1910, there was filed in said clerk's office, a judgment, in words and figures as follows, to wit:

TERRITORY OF NEW MEXICO,
County of San Miguel, ss:

In the District Court for the Fourth Judicial District, Sitting Within and for San Miguel County for the Trial of Causes Arising under the Laws of the Territory of New Mexico.

151 Ex Parte GEORGE E. PRIEST, MELVIN W. QUICK, and CHARLES M. BENJAMIN.

Petition for Mandamus to the Board of Trustees of the Town of Las Vegas.

Judgment.

This cause coming on to be heard upon the petition of Relators asking for a mandamus against the Board of Trustees of the Town of Las Vegas, commanding and directing them to make and execute a deed of conveyance to them for certain lands mentioned and described in said petition, and upon the answer and counter-claim of Respondents and the reply of Relators thereto, and upon the testimony offered for and on behalf of the respective parties upon the hearing of the said cause, and upon the argument of respective counsel for the parties hereto, and the Court being now fully advised in the premises does find as follows:

(I)

That the statute of limitations did not begin to run against the Las Vegas Grant until after the passage of the Act of the Legislative Assembly of the Territory of New Mexico of 1903, and the appointment of a Board of Trustees by this Court to manage and control the Las Vegas Land Grant.

(II)

That the possession of relators and their predecessors in title for the period of ten years prior to the date of the passage of said
152 Act and the appointment of trustees thereunder could not ripen into title against the said respondents.

Wherefore, it is accordingly ordered, adjudged and decreed by the Court, that the said decree in favor of relators of date September 15th, A. D. 1894, quieting title in said relators is not binding upon the respondents herein and that the petition of relators is therefore dismissed.

Done in Chambers at Las Vegas, New Mexico, this 26th day of February, 1910.

(Signed) WILLIAM J. MILLS,
Chief Justice, etc.

(Endorsed:) No. 6220. District Court, San Miguel County. Ex Parte, George E. Priest, Melvin W. Quick and Charles M. Benjamin. Judgment. Filed in my office Feb. 26, 1910. Secundino Romero, Clerk.

Ent. Rec. O. p. 381.

And afterwards, to wit, on April 30th, 1910, there was filed in said clerk's office a motion for re-hearing in words and figures as follows, to wit:

TERRITORY OF NEW MEXICO,
County of San Miguel, ss:

In the District Court for the Fourth Judicial District, Sitting
153 Within and for San Miguel County for the Trial of Causes Arising under the Laws of the Territory of New Mexico.

Ex Parte GEORGE E. PRIEST, MELVIN W. QUICK, and CHARLES M. BENJAMIN.

Petition for a Mandamus to the Board of Trustees of the Town of Las Vegas.

Now come the relators in the above entitled cause and ask the Court to grant them a re-hearing, upon the following grounds and for the following reasons, to wit:

The court erred in overruling the motion to strike out and the demurrers to the answer and return and so-called counter-claim of respondents.

The Court erred in holding in said cause that the statute of limitations did not begin to run against the Las Vegas Grant until after the passage of the Act of the Legislative Assembly of the Territory of New Mexico of 1903, and the appointment of the Board of Trustees by the Court to manage and control the Las Vegas Grant.

The Court erred in holding that the possession of relators and their predecessors in title for the period of ten years prior to the date of the passage of said Act and the appointment of trustees thereunder could not ripen into title against the said respondents.

The Court erred in holding that the decree in favor of relators of date September 15th, 1894, quieting title in said relators was not binding upon respondents.

VEEDER AND VEEDER,
Attorneys for Relators.

154 (Endorsed:) No. 6220. District Court, San Miguel County. Ex-Parte, George E. Priest, Melvin W. Quick, Charles M. Benjamin. Motion for re-hearing. Filed in my office April 30, 1910. Secundino Romero, Clerk. Veeder and Veeder, of Las Vegas, Att'ys for Relators.

And afterwards, towit, on April 30th, 1910, there was filed in said clerk's office, an order of Court overruling the motion for a re-hearing, in words and figures as follows, towit:—

In Vacation.

TERRITORY OF NEW MEXICO,
County of San Miguel, ss:

In the District Court of the Fourth Judicial District, Sitting Within and for the County of San Miguel for the Trial of Causes Arising under the Laws of the Territory of New Mexico.

Ex Parte GEORGE E. PRIEST, MELVIN W. QUICK, and CHARLES M. BENJAMIN.

Petition for a Mandamus to the Board of Trustees of the Town of Las Vegas.

This cause coming on this day to be heard upon the motion and request of relators to grant them a re-hearing in the above entitled cause, and after hearing Messrs. Veeder & Veeder, counsel
155 for said relators, and being now fully advised in the premises:—

It is accordingly ordered that the said motion be and the same hereby is overruled, to which said ruling of the Court relators except.

JOHN R. McFIE,
Associate Justice of the Supreme Court of New Mexico,
Acting in the Fourth Judicial District of New Mexico.

And afterwards, towit, on April 30th, 1910, there was filed in said clerk's office a motion for an appeal to the Supreme Court, in words and figures as follows:—

TERRITORY OF NEW MEXICO,
County of San Miguel, ss:

In the District Court for the Fourth Judicial District, Sitting Within and for San Miguel County for the Trial of Causes Arising under the Laws of the Territory of New Mexico.

Ex Parte GEORGE E. PRIEST, MELVIN W. QUICK, and CHARLES M. BENJAMIN.

Petition for a Mandamus to the Board of Trustees of the Town of Las Vegas.

Now come the relators in the above entitled cause by Messrs. Veeder and Veeder, their attorneys, and ask the Court to grant them

an appeal in said cause to the Supreme Court of the Terri-
156 tory of New Mexico, from the findings and decision of the Court dismissing the petition of Relators.

VEEDER AND VEEDER,
Attorneys for Relators.

(Endorsed:) No. 6220. District Court, San Miguel County. Ex-Parte, George E. Priest, et als. Motion for Appeal to Supreme Court. Veeder & Veeder, of Las Vegas, Att'ys for Relators. Filed in my office April 30th, 1910. Secundino Romero, Clerk.

And afterwards, towit, on April 30th, 1910, there was filed in said clerk's office a request of J. D. W. Veeder and Elmer E. Veeder, to sign as sureties on appeal bond, in words and figures as follows, to-wit:—

TERRITORY OF NEW MEXICO,
County of San Miguel, ss:

In the District Court for the Fourth Judicial District, Sitting Within and for San Miguel County for the Trial of Causes Arising under the Laws of the Territory of New Mexico.

Ex Parte GEORGE E. PRIEST, MELVIN W. QUICK, and CHARLES M. BENJAMIN.

157 *Petition for a Mandamus to the Board of Trustees of the Town of Las Vegas.*

Now comes John D. W. Veeder and Elmer E. Veeder, practicing attorneys before this Court, and asks the Court that they be permitted to sign as sureties on the bond of the relators in the above entitled cause, upon their appeal to the Supreme Court of the Territory of New Mexico, for the reason that the said relators are residents of Ithaca, in the State of New York, and in consequence would be put to great trouble and inconvenience in procuring sureties upon said bond.

JOHN D. W. VEEDER.
ELMER E. VEEDER.

(Endorsed:) No. 6220. District Court, San Miguel County. Ex-Parte, George E. Priest, Melvin W. Quick and Charles M. Benjamin. Request of J. D. W. Veeder and Elmer E. Veeder to sign as sureties on appeal bond. Filed in my office April 30th, 1910. Secundino Romero, Clerk.

And afterwards, towit, on April 30th, 1910, there was filed in said clerk's office an order of Court granting an appeal and allowing attorneys to sign bond, etc., in words and figures as follows, towit:—

In Vacation.

TERRITORY OF NEW MEXICO,
San Miguel County:

In the District Court for the Fourth Judicial District, Sitting
158 Within and for San Miguel County for the Trial of Causes Arising under the Laws of the Territory of New Mexico.

Ex Parte GEORGE E. PRIEST, MELVIN W. QUICK, and CHARLES M. BENJAMIN.

Petition for Mandamus.

This cause coming on to be heard this day before the Court upon the application of relators to grant them an appeal from the judgment and decision of the Court in said cause to the Supreme Court of the Territory of New Mexico, and the Court having heard Messrs. Veeder and Veeder, attorneys for said relators, and being now fully advised in the premises, does hereby grant said appeal upon relators furnishing a bond to the satisfaction of the clerk, in the sum of four hundred dollars to cover the costs of said appeal.

It is further ordered that the said John D. W. Veeder and Elmer E. Veeder, be permitted to sign said bond as sureties thereon upon qualifying in the above sum.

JOHN R. McFIE,
Associate Justice of the Supreme Court, Acting in the Fourth Judicial District of New Mexico.

And afterwards, towit, on April 30th, 1910, there was filed in said clerk's office an appeal bond, in words and figures as follows, towit:—

159 Know all men by these presents: That we, George E. Priest, as principal and John D. W. Veeder and Elmer E. Veeder, as his sureties, are held and firmly bound unto the Board of Trustees of the Town of Las Vegas, administering the Las Vegas Grant, in the penal sum of Four Hundred ($400) dollars, lawful money of the United States, for the payment of which well and truly to be made we bind ourselves and our heirs, executors and administrators firmly by these presents.

Sealed with our seals and dated this 15th day of April, A. D. 1910.

The condition of the above obligation is such, That Whereas, in a certain proceeding for Mandamus pending in the District Court of the Fourth Judicial District of the Territory of New Mexico, in and for the County of San Miguel, said cause being No. 6220, on the docket of said Court, in which proceeding, George E. Priest, Melvin W. Quick and Charles M. Benjamin are relators, and the Board of Trustees of the Town of Las Vegas, administering the Las Vegas

Grant, are respondents, the Court dismissed the said petition and denied the relators a right of mandamus; and,

Whereas, the said relators consider themselves aggrieved by the said judgment and decision of the Court and have taken an appeal therefrom to the Supreme Court of the Territory of New Mexico, and the bond on such appeal has been fixed at the sum of four hundred dollars:—

Now, if the said relators shall prosecute their said appeal
160 with due diligence in the Supreme Court, and shall pay all costs that may be adjudged against them on such appeal, then this obligation to be null and void, otherwise to remain in full force and effect.

GEORGE E. PRIEST. [SEAL.]
JOHN D. W. VEEDER. [SEAL.]
ELMER E. VEEDER. [SEAL.]

TERRITORY OF NEW MEXICO,
County of San Miguel, ss:

On this 29th day of April, A. D. 1910, before me the undersigned, personally appeared John D. W. Veeder and Elmer E. Veeder to me known to be the persons described in and who executed the foregoing bond as sureties thereon and acknowledged that they executed the same as their free act and deed; and the said John D. W. Veeder and Elmer E. Veeder, being each severally sworn, upon their oath did state, that they were each worth the sum of four hundred dollars over and above their just debts and liabilities and property by law exempt from execution.

Witness my hand and Notarial Seal this 29th day of April, A. D. 1910.

[N. P. SEAL.] FRANK ROY,
Notary Public.

My commission expires August 12, 1912.

STATE OF NEW YORK,
County of Tompkins,
City of Ithaca, ss:

161 George E. Priest, being duly sworn, deposes and says: that he is the person described in and who executed the foregoing bond, and that he is worth the sum of four hundred dollars over and above his just debts and liabilities and property exempt by law from execution.

Witness my hand and seal this 25th day of April, A. D. 1910.

[SEAL.] E. E. INGALLS,
Notary Public.

My commission expires March 1, 1916.

STATE OF NEW YORK,
Tompkins County:

CLERK'S OFFICE.

I, Albert H. Overacker, Clerk of said County and of the courts of record in and for said county (except Surrogate's Court) do hereby certify that E. E. Ingalls, before whom the preceding affidavit was taken, was at the time of the taking of the same a Notary Public in and for said county, duly sworn and authorized to take the same; and further that I am well acquainted with the hand-writing of said officer and verily believe that the signature to the preceding affidavit is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of said county and courts this 25th day of April, 1910.

[SEAL.] A. H. OVERACKER, *Clerk.*

162 And afterwards, towit, on July 8th, 1910, there was filed in said clerk's office a citation, in words and figures as follows, towit:—

In the District Court, Fourth Judicial District, Territory of New Mexico, County of San Miguel.

No. 6220.

Ex parte GEORGE E. PRIEST et als., Relators,
vs.
BOARD OF TRUSTEES OF THE TOWN OF LAS VEGAS, Respondents.

Proceedings in Mandamus.

To the Board of Trustees of the Town of Las Vegas, and to Jefferson Raynolds, President of the Board of Trustees of the Town of Las Vegas, Las Vegas, N. M., Greeting:

Whereas, George E. Priest, Melvin W. Quick and Charles M. Benjamin, Relators in the above entitled cause, have made an appeal to the Supreme Court of the Territory of New Mexico, from the
163 judgment rendered in the District Court of the Fourth Judicial District of the Territory of New Mexico, within and for the County of San Miguel, and have filed the security required by law.

You are hereby cited to appear before the said Supreme Court at Santa Fe, New Mexico, on the 7th day of September, A. D. 1910, that being the return day of said appeal, then and there to answer said appeal.

Witness the Hon. John R. McFie, Associate Justice of the Supreme Court of the Territory of New Mexico, and Judge of the First Judicial District Court thereof, acting as Judge of the Fourth Judicial District, there being a vacancy in the Judgeship of said Fourth Judicial District this 8th day of July, 1910.

[SEAL.] SECUNDINO ROMERO, *Clerk.*

A true copy of the above citation was served by me upon Jefferson Raynolds, President of the Board of Trustees of the Town of Las Vegas, this 8th day of July, 1910, by delivering said copy to said Jefferson Raynolds personally.

(Signed) WM. B. STAPP,
Deputy Sheriff for San Miguel County.

TERRITORY OF NEW MEXICO,
County of San Miguel, ss:

I, Secundino Romero, Sheriff of the County of San Miguel in the Territory of New Mexico, do hereby certify that I did on the 8th day of July, A. D. 1910, at Las Vegas, in my said County of San Miguel in the Territory of New Mexico, serve the annexed
164 and attached citation of appeal upon the Board of Trustees of the Town of Las Vegas, by then and there delivering to Jefferson Raynolds in person, a true copy of said citation and notice of appeal, he, the said Jefferson Raynolds being then and there the President of the Board of Trustees of the Town of Las Vegas.

I further certify that I did on the 8th day of July, A. D. 1910, at East Las Vegas in my said County of San Miguel in the Territory of New Mexico, serve the said citation and notice of appeal upon A. T. Rogers, Jr., by then and there delivering to the said A. T. Rogers, Jr., in person a true copy of said citation and notice of appeal, he, the said A. T. Rogers, Jr., being then and there a member of the firm of Jones & Rogers.

I further certify that I did on the 8th day of July, A. D. 1910, at East Las Vegas in my said County of San Miguel in the Territory of New Mexico, serve the said citation and notice of appeal upon S. B. Davis, Jr., by then and there delivering to S. B. Davis, Jr., in person, a true copy of said citation and notice of appeal, he the said S. B. Davis, Jr., being then and there a member of the law firm of Spiess & Davis.

In witness whereof, I have hereunto set my hand this 8th day of July, A. D. 1910.

(Signed) SECUNDINO ROMERO, *Sheriff,*
By WM. B. STAPP, *Deputy.*

For as much, as the matters and things herein set out are not of record in said cause, and the said Relators have prayed that the foregoing matters and things be made a part of this bill of
165 exceptions, in this cause, in order that they may become a part of the record herein; said bill of exceptions containing all of the evidence offered on the trial of said cause, and all exhibits, orders of court and exceptions is hereby allowed and signed and sealed and enrolled and made a part of the record in said cause this 1st day of July, A. D. 1910.

(Signed) JOHN R. McFIE,
Associate Justice of the Supreme Court of the Territory of New Mexico, and Judge of the First Judicial District Court Thereof, Acting as Judge of the Fourth Judicial District, There Being a Vacancy in the Judgeship in said Fourth Judicial District.

TERRITORY OF NEW MEXICO,
County of San Miguel, ss:

I, Secundino Romero, Clerk of the District Court for the Fourth Judicial District, sitting within and for San Miguel County, for the trial of causes arising under the laws of the Territory of New Mexico, certify that the foregoing to which this certificate is attached, contains a full, complete, and correct copy and transcript of the pleadings, orders of Court, records, testimony and exhibits, in cause No. 6220, District Court for San Miguel County, entitled Ex-Parte, George E. Priest, Melvin W. Quick and Charles M. Benjamin, Relators, vs. The Board of Trustees of the Town of Las Vegas, Respondents, as the same appears on file and of record in my office.

Witness My hand and the seal of said Court this 8th day of July, 1910.

[SEAL.] (Signed) SECUNDINO ROMERO, *Clerk.*

166 And afterwards, on towit, *on* the tenth day of August, A. D. 1910, there was filed in the office of the Clerk of the Supreme Court of the Territory of New Mexico, an assignment of errors by appellants in the above entitled cause, which said assignment of errors was and is in the following words and figures towit:—

In the Supreme Court of the Territory of New Mexico, January Term, A. D. 1910.

No. 1342.

Ex parte GEO. E. PRIEST, MELVIN W. QUICK, CHARLES M. BENJAMIN, Relators and Appellants,
vs.
BOARD OF TRUSTEES OF THE TOWN OF LAS VEGAS, Respondents, Appellants.

Appeal from District Court of the Fourth Judicial District, County of San Miguel, Territory of N. M.

Assignment of Errors.

Comes now appellants in the above entitled cause and assign errors as follows:

I.

The Court erred in over-ruling the motion of Relators to strike from the files the answer and return of Respondents.

II.

The Court erred in over-ruling the demurrer of Relators to the answer and return of Respondents.

III.

The Court erred in over-ruling the motion of Relators to strike from the files the so-called counter-claim and additional defense of Respondents.

IV.

The Court erred in over-ruling the demurrer of Relators
167 to said so-called counter-claim and additional defense of Respondents.

V.

The Court erred in finding that the Statute of Limitations did not begin to run against the Las Vegas Grant until after the passage of the Act of the Legislative Assembly of the Territory of New Mexico of 1903 and the appointment of the Board of Trustees by the Court to manage and control the Las Vegas Grant.

VI.

The Court erred in finding that the possession of Relators and their predecessors in title for the period of ten years prior to the date of the passage of said Act of 1903 and the appointment of the Trustees thereunder could not ripen into title against Respondents.

VII.

The Court erred in finding that the decree in favor of Relators of September 15th, 1894, quieting title in them was not binding upon Respondents.

VIII.

The Court erred in dismissing the petition of Relators.

Wherefore, Appellants pray that the said rulings and findings made by the Court in said cause be vacated and set aside and that the said cause be remanded to the District Court with instructions to find in favor of Appellants and order a mandamus to issue in accordance with the prayer of Relators' petition.

VEEDER & VEEDER,
Of Las Vegas, N. M., Attorneys for Appellants.

168 And afterwards, on to wit, at a regular term of the Supreme Court of the Territory of New Mexico, begun at Santa Fe, the seat of government on the first Wednesday after the first Monday in January, A. D. 1910, the following among other proceedings were had and entered of record, to wit:

No. 1342.

Ex Parte Geo. E. Priest et al., Appellants,
vs.
Board of Trustees of the Town of Las Vegas, Appellees.

Appeal from District Court, San Miguel County.

Upon agreement and stipulation of counsel, it is ordered by the court that this case be and the same hereby is continued for the term.

And afterwards, on to wit, at a regular term of the Supreme Court of the Territory of New Mexico, begun and held at Santa Fe, the seat of government on the first Wednesday after the first Monday in January, A. D. 1911, on the fifth day of the said regular term, the same being Monday, January 23rd, A. D. 1911, the following among other proceedings were had and entered of record to wit:

No. 1342.

Ex Parte George E. Priest et als., Appellants,
vs.
Board of Trustees of the Town of Las Vegas, Appellees.

Appeal from District Court, San Miguel County.

It is ordered by the court that this cause be and the same hereby is re-set for hearing for Saturday, January 28th, 1911.

169 And afterwards, on to wit, *on* the tenth day of the said regular term, the same being Saturday, January 28th A. D. 1911, the following among other procedings were had and entered of record, to wit:

No. 1342.

Ex Parte George E. Priest et als., Appellants,
vs.
Board of Trustees of the Town of Las Vegas, Appellees.

Appeal from District Court, San Miguel County.

This cause coming on for hearing upon the transcript of record, assignment of errors and briefs of counsel, is argued by John D. W. Veeder, Esq., for Appellants and Charles A. Spiess, Esq., and Stephen B. Davis, Jr., Esq., for appellees, and submitted to the court and the court not being sufficiently advised in the premises, takes the same under advisement.

And afterwards, on to wit, *on* the Forty-seventh day of the said Regular term, the same being Friday, December 22nd, A. D. 1911, the following among other proceedings were had and entered of record, to wit:

No. 1342.

Ex Parte GEO. E. PRIEST et als., Appellants,

vs.

BOARD OF TRUSTEES OF THE TOWN OF LAS VEGAS, Appellees.

Appeal from District Court, San Miguel County.

This cause having been argued by counsel, submitted to and taken under advisement by the Court upon a former day of the present term, and the court being now sufficiently advised in the premises, announces its decision by Chief Justice Pope, Associate Jus-
170 tices McFie, Parker, Mechem, Wright, Roberts and Abbott, concurring, affirming the judgment of the court below, for reasons stated in the opinion of the court on file. It is therefore considered and adjudged by the court that the judgment of the district court in and for the county of San Miguel, whence this cause came into this court, be and the same hereby is affirmed, and that in accordance therewith, It is accordingly considered and adjudged by the court that the decree in favor of the relators dated September 15th, A. D. 1894, quieting title in said relators is not binding upon the respondents herein and that the petition of relators is therefore dismissed with costs.

And afterwards, on to wit, *on* the twenty-sixth day of December, A. D. 1911, there was filed in the office of the Clerk of the Supreme Court of the Territory of New Mexico, a motion for a rehearing of the above entitled cause, which said motion for a rehearing herein was and is in the following words and figures, to wit:

In the Supreme Court of the Territory of New Mexico, January Term, A. D. 1911.

No. 1342.

Ex Parte GEO. E. PRIEST, MELVIN W. QUICK, and CHARLES B. BENJAMIN (Relators), Appellants,

vs.

BOARD OF TRUSTEES OF THE TOWN — LAS VEGAS (Respondents), Appellees.

Mandamus.

Appeal from the District Court, San Miguel County.

Now come the relators and Appellants in the above entitled cause and move the court to grant them a re-hearing of said cause, upon the following grounds, to wit:

1st. The Court erred in holding that the petition in this cause from its form and recital was any thing other than a petition for mandamus and the pleadings in the Court below show that all parties treated it as such.

171 2nd. The Court erred in holding that the District Court of San Miguel County in the suit to quiet title to the premises in question, had no jurisdiction of the Town of Las Vegas through service of publication upon "All the Unknown claimants of interests in the premises adverse to complainants," and therefore the Decree of September 15th, 1894, was not binding upon Respondents and Appellees here; contrary to the presumption of jurisdiction attaching to all Decrees or Courts of record and the express recitals in the Decree "That all of the defendants to the said cause, both known and unknown, and all persons who may have or claim any interest or title to the lands and premises set out and described in the Bill of Complaint, and hereinafter described, have been brought before the Court by the proper process and are each and all properly made defendants to said Bill of Complaint and that the service upon each and all of the parties defendant in said cause is in all respects and particulars in conformity to law, and that the Court has jurisdiction of each and all of the said defendants, whether known or unknown, and has jurisdiction of the subject matter of this suit." Which said presumption and recitals are conclusive on this Court as well as all parties to this proceeding and can not be collaterally denied nor contradicted by any extraneous evidence.

3rd. The court erred in setting aside and ignoring in a collateral proceeding upon extraneous evidence the solemn adjudication in the Decree of Sept. 15, 1894, by a Court of Record, of its Jurisdiction of all parties, known or unknown, so as to enable it to quiet title against the world.

4th. The Court erred in holding that the special finding of the District Court of San Miguel County as to its jurisdiction of all parties in the Decree of September 15, 1894, quieting title to the premises in question in Relator's and Appellants, were less conclusive upon the Court in this collateral proceeding than, to use the language of the opinion, "All the findings upon which

172 that Decree proceeds," whether properly made or not.

5th. The Court erred in holding that any of the testimony by Respondents and Appellees, at the trial of this proceeding in the Court below and admitted over objections of Relators, was either admissible or material to contradict or impeach in this collateral proceeding any of the findings of the Decree of Sept. 15th, 1894, whether as to jurisdiction of parties, the running of the statutes of limitations or any other matter therein adjudicated.

6th. The Court erred in holding that because the Las Vegas Grant was by Act of Congress confirmed to the Town of Las Vegas, which at the time of the institution of the suit to quiet title and the rendition of the decree of September 15th, 1894, therein, had no corporate existence and could not therefore be personally served with process, it was nevertheless a "Known Owner," in the sense that the known

and unknown are used when applied to claimants of property, and should have been made a party to such suit by that name and served with notice by publication, not as an "Unknown Owner" but as a defendant "So situated that process could not otherwise be served upon it."

7th. The Court erred in holding that there is a distinction between defunct artificial persons and deceased natural persons, in that the statute requires only the heirs of deceased natural persons to be made parties to a proceeding to quiet title and by analogy in the case of a defendant artificial persons, such as a municipal corporation, endowed with a trust estate, only the beneficiaries of the trust would be necessary, not the defunct corporation, as the Court says, to subject such an estate to the Decree.

8th. The court erred in holding that the citation by publication of "All the unknown claimants of interests in the premises adverse to complainants" did not operate to render the adjudication binding upon "The Board of Trustees of the Town of Las Vegas," notwithstanding it brought before the Court all of the beneficiaries
173 of the Las Vegas Grant with whom the Board of Trustees are in pricity.

9th. The Court erred in not holding that the Decree of Dec. 16th, 1894, was in all respects conclusive and binding upon it and all parties to the proceeding and could neither be impeached nor contradicted by any extraneous evidence in this collateral proceeding.

10th. The Court erred in not setting aside the judgment of the Court below.

11th. The Court erred in not passing upon relator's and appellants' exceptions to the rulings of the Court below upon the motion to strike out parts of Respondent's answer and so called counter-claim and additional defense and demurrers thereto, as well as the objections to testimony introduced by respondents.

12th. The Court erred in not reversing the judgment of the Court below and remanding the case with instructions that a Writ of Mandamus issue as prayed for.

(Signed) VEEDER & VEEDER,
Las Vegas, N. M.,
Att'ys for (Relators) Appellants.

And afterwards, on towit, *on* the Fif-ieth day of the said regular term, the same being Tuesday, January 2nd, A. D. 1912, the following among other proceedings were had and entered of record, towit:

No. 1342.

Ex Parte GEO. E. PRIEST et al. (Relators), Appellants,
vs.
BOARD OF TRUSTEES OF THE TOWN OF LAS VEGAS (Respondents).

Appeal from District Court, San Miguel County.

This cause coming on before the court upon the motion
174 of appellants herein for a rehearing and the court having had said motion under advisement and being now sufficiently advised in the premises, denies said motion. It is therefore considered and adjudged by the court that the motion of appellants for a rehearing herein be and the same hereby is denied.

And afterwards, on towit, *on* the Fiftieth day of the said Regular term, the same being Tuesday, January 2nd, A. D., 1912, the following among other proceedings were had and entered of record, towit:

No. 1342.

Ex Parte GEO. E. PRIEST et als. (Relators), Appellants,
vs.
THE BOARD OF TRUSTEES OF THE TOWN OF LAS VEGAS (Respondents), Appellants.

Appeal from District Court, San Miguel County.

This cause coming up on the motion of John D. W. Veeder, Esq., Attorney for Appellants asking the court here to fix the amount of the appeal bond herein and the court being sufficiently advised in the premises fixed the same at the sum of One Thousand Dollars, conditioned as prescribed by law. It is therefore considered and adjudged by the court that the appeal bond herein on appeal to the Supreme Court of the United States be and the same hereby is fixed at the sum of One Thousand Dollars conditioned as prescribed by law and to be approved by one of the judges of this court.

And afterwards, on towit, at regular term of the Supreme Court of the Territory of New Mexico, begun and held at Santa Fe, on the First Wednesday after the First Monday in January A. D., 1912, on the first day thereof, the same being Wednesday January 3rd, A. D., 1912, the following among other proceedings were had and entered of record towit:

175 No. 1342.

Ex Parte GEO. E. PRIEST et als. (Relators), Appellants,
vs.
BOARD OF TRUSTEES OF THE TOWN OF LAS VEGAS (Respondents), Appellees.

Appeal from District Court, San Miguel County.

This cause coming on before the court upon the motion of John D. W. Veeder, Esq., attorney for appellant asking the court to make a statement of facts in the nature of a special verdict and the court having had said motion under consideration and being now sufficiently advised in the premises, now files with the Clerk of this court duly signed by the Chief Justice of this Court, its Statement of Facts in the nature of a special verdict. It is therefore considered and adjudged by the court that the Statement of Facts as the same have been filed in the office of the Clerk of the Supreme Court of New Mexico, duly signed by the Chief Justice of this Court be and the same hereby are made the findings of fact of this court in the above entitled cause in the nature of a special verdict.

And afterwards, on towit, *on* the said the 3rd day of January A. D., 1912, there was filed by the Court in the office of the Clerk of the Supreme Court of the Territory of New Mexico, a statement of facts in the nature of a special verdict in the above entitled cause, which said statement of facts in the nature of a special verdict were and are in the following words and figures towit:

176 In the Supreme Court of the Territory of New Mexico, January Term, A. D. 1911.

No. 1342.

Ex Parte GEO. E. PRIEST, MELVIN W. QUICK, and CHARLES M. BENJAMIN (Relators), Appellants,
vs.
BOARD OF TRUSTEES OF THE TOWN OF LAS VEGAS (Respondents), Appellees.

Appeal from the District Court of San Miguel County.

Findings of Facts.

1.

That the tract of land in question here, comprising about 2,000 acres is situated within the County of San Miguel, and Territory of New Mexico and within the exterior boundaries of that grant of land known as the Las Vegas Grant.

2.

That George E. Priest, Melvin W. Quick and Charles M. Benjamin, residents of Ithaca, in the State of New York, claiming to be the owners of said tract of land, on July 19, 1894, filed their suit in the District Court of San Miguel County, a Court of General Jurisdiction, and of record, to quiet title thereto in them, said petition being as follows:

TERRITORY OF NEW MEXICO,
County of San Miguel, ss:

In the District Court of the Fourth Judicial District of the Territory of New Mexico, Sitting in and for the County of San Miguel for the Trial of Causes Arising under the Laws of the Territory of New Mexico, at the First Return Day for Said Court, in September, A. D. 1894.

To the Honorable Thomas Smith, Chief Justice of the Supreme Court of the Territory of New Mexico and ex-Officio Judge of Said District Court, in Chancery Sitting:

Your orators, George E. Priest, Melvin W. Quick and Charles M. Benjamin, residents of the City of Ithaca, in the State of New York, bring this their bill of complaint against John H. Teitlebaum, and Lena J. Teitlebaum, his wife, residents of Las Vegas, San Miguel County, New Mexico; Adolph Teitlebaum, a resident of Atlanta, in the State of Georgia; the Fairview Town Company, a corporation organized under the laws of the Territory of New Mexico, and heretofore doing business at Las Vegas, in the County of San Miguel in the Territory of New Mexico; the unknown successors in interest and unknown assigns of the said Fairview Town Company, James J. Fitzgerrell, and Maria E. Fitzgerell, his wife, whose place of residence is to your orators unknown, and all the unknown claimants of interests in the premises and lands hereinafter described to your orators, and thereupon your orators complain and show unto your Honor:

177

That your orators are the owners in fee simple and the present occupants and possessors of that certain tract of land, situate, lying and being in the County of San Miguel and Territory of New Mexico, and bounded and described as follows:—

Beginning at a point on the east bank of the Arroyo Pecos nineteen and seventeen hundredths (19 & 17/100) chains west of the southeast corner of Section twenty-three (23) in Township sixteen (16) north of Range Sixteen (16) East, said point being marked with a blue limestone rock six inches by six inches by eighteen inches (6″ x 6″ x 18″) set in the ground, and with a small triangle cut on the top, running thence south 3 degrees and 40′ west 5.93 chains;

Thence south 52 degrees east 36.50 chains;
Thence south 33 degrees east 21.90 chains;
Thence south 26 degrees east 37.46 chains;

Thence south 58 degrees east 12 chains;
Thence south 48 degrees and 30′ east 10.70 chains;
Thence east 66 chains;
Thence north two hundred and twelve and eighteen hundredth (212 & 18/100) chains;
Thence west one hundred and fifty-five and sixteen hundredth (155 & 16/100) chains, more or less, to the Arroyo Pecos;
Thence following the Arroyo Pecos to the place of beginning by the following meanderings:—
South 34 degrees and 15′ west 20 chains;
Thence south 7 degrees west 18 chains;
Thence south 5 degrees and 15′ east 8 chains;
Thence south 8 degrees west 5.57 chains, to the place of beginning.

That the said tract of land lies within the exterior boundaries of that certain grant of land made by the Government of Mexico, in the year A. D. 1835, to Juan de Dios Maese and others, and known as the Las Vegas Grant, the said grant, as your orators are informed and believe being made by the Mexican Government to the said Juan de Dios Maese and others, for the use and benefit of the inhabitants and settlers of the Town of Las Vegas.

That the said grant of land made by the Mexican Government to Juan de Dios Maese and others, was known in the archives
178 of the Surveyor General of New Mexico, as Private Land Claim No. Twenty (20), and as such was, on June 21, 1860, duly confirmed by Act of Congress of the United States to the Town of Las Vegas, and thereby became segregated from the public domain of the United States.

That the said tract of land hereinbefore described as belonging to your orators was taken possession of by them and their grantors under and by virtue of the terms and provisions of the said Las Vegas Grant, and the laws of the Territory of New Mexico applicable thereto, more than ten years prior to the commencement of this suit; and that they and their grantors, through whom they claim title and from whom they have deeds of conveyance, have been in the actual, exclusive, open, notorious, uninterrupted and adverse possession, under claim of title, of the said tract of land and premises and each and every part thereof, and no claim by suit at law or in equity, effectually prosecuted has been set up or made to the said tract of land, or any part thereof, within the aforesaid time of more than ten (10) years, next preceding the commencement of this suit; and that in consequence of such actual, exclusive, open, notorious, uninterrupted, and adverse possession, under claim of title, of the said tract of land and every part thereof for more than said period of ten (10) years, your orators are entitled to keep and hold in their possession the said tract of land in preference to all and against all, and all manner of person or persons whatsoever, and have a good and indefeasible title in fee simple to the same, and are entitled to enjoy the same free from any trouble, hinderance, delay or obstruction on the part of any one.

That your orators are credibly informed and believe that the

defendants, John H. Teitlebaum, Lena J. Teitlebaum, Adolph Teitlebaum, the Fairview Town Company, James J. Fitzgerrell, and Maria E. Fitzgerrell, make some claim adverse to the estate of your orators, but what the nature and extent of their said claim is, if any, your orators are unable to state.

That your orators are credibly informed and believe that certain unknown successors and assigns of the Fairview Town Company also make some claim of interest and title in and to the said tract of land, adverse to your orators, but the nature and extent of their said claim and interest is also to your orators unknown.

That your orators are credibly informed and believe that certain unknown persons, designated in this bill as "unknown claimants of interest in the premises adverse to your orators", also make some claim of interest and title in and to the said tract of land
179 adverse to the estate of your orators, but what the nature and extent of said claim of said unknown persons in and to the said tract of land is, is likewise to your orators unknown.

Your orators further represent unto your Honor that all of the said claims and pretenses on the part of each and every one of the said defendants, known and unknown, of title and interest in and to the said tract of land, claimed and owned by your orators, and hereinbefore fully described, are adverse to the estate of your orators and of no avail against the title of your orators and constitute a cloud upon the title of your orators.

In consideration of the premises, and inasmuch as your orators are without adequate remedy by the strict rules of the common law, they, as required by law, apply to your Honor's Court in Chancery, where such matters are properly cognizable and relieveable, and pray that the said John H. Teitlebaum and Lena J. Teitlebaum, his wife, Adolph Teitlebaum, the Fairview Town Company, the unknown successors in interest and unknown assigns of the said Fairview Town Company, James J. Fitzgerrell, and Maria E. Fitzgerrell, his wife, and all the unknown claimants of interest in the land and premises hereinbefore described adverse to your orators, be made parties defendant to this bill of complaint, with proper process to bring them before the Court, and that they and each of them be compelled to answer all and singular, the premises and allegations aforesaid, but not under oath, an answer under oath being hereby expressly waived; that upon the final hearing of the said cause, the said premises being found for your orators, they pray that their title and estate in and to the whole of the said tract of land and real estate, hereinbefore described, be established as the estate and property of your orators in fee simple title, free from and against any and all claims whatsoever of said defendants or any or either of them, or to any adverse claim of said defendants or any or either or them; and that each and all and every of the said defendants be barred and forever estopped from having or claiming any right or title in and to the said premises and tract of land hereinbefore described, adverse to your orators, and that your orators' title thereto to the whole of the said tract of land be forever quieted and set at rest and that your orators may have such other and fur-

ther relief in the premises as equity may require and to your Honor shall seem meet and proper.

May it please your Honor to grant unto your orators the
180 writ of subpœna in chancery, directed to the said defendants and each and every one of them, who are hereby made parties defendant to this bill of complaint, commanding them and each of them to be and appear before this Honorable Court to be held in the Town of Las Vegas, in the County of San Miguel aforesaid, on the first Monday of September, the same being the 3rd day of September, A. D. 1894, then and there to answer, all and singular, the premises aforesaid, and to stand to, and abide by such order, direction and decree therein, as to your Honor shall seem meet. And your orators in duty bound will ever pray, etc.

(Signed) GEORGE E. PRIEST,
MELVIN W. QUICK,
CHARLES M. BENJAMIN,
Complainants.

VEEDER & VEEDER, of Las Vegas., N. M.,
Solicitors for Complainants.

8.

That said suit to quiet title was filed under the provision of the following statute of New Mexico then in force:

"4010. An action to determine and quiet the title of real property may be brought by any one having or claiming an interest therein, whether in or out of possession of the same, against any person claiming title thereto.

4011. The plaintiff must file his bill of complaint in the district court, setting forth the nature and extent of his estate, and describing the premises as accurately as may be, and averring that he is credibly informed and believes that the defendant makes some claim adverse to the estate of the plaintiff, and praying for the establishment of the plaintiff's estate against such adverse claims, and that the defendant be barred and forever estopped from having or claiming any right or title to the premises, adverse to the plaintiff, and plaintiff's title thereto be forever quieted and set at rest. Any or all persons whom the plaintiff alleges in his bill of complaint, he is informed and believes make claim adverse to the estate of the plaintiff, the unknown heirs of any deceased person whom plaintiff alleges in his bill of complaint in his life time made claim adverse to the estate of plaintiff, and all unknown persons who may claim any interest or title adverse to plaintiff, may be made parties defendants to said bill of complaint by their names, as near as the same can be ascertained, such unknown heirs by the style of unknown heirs of such deceased person, and said unknown persons who may claim any interest or title adverse to plaintiff by the name and style of unknown claimants of interests in the premises adverse to plaintiff, and the service of process on, and notice of said suit against defendants, shall be made in the same manner as now provided by law in other civil suits.

181 4012. If the defendant, or any of them, shall appear and disclaim all right and title adverse to the plaintiff, he shall recover his costs, and in all other cases the costs shall be in the discretion of the Court. If the defendant or any one of them fails to appear and answer, the Court may render decree against such defendant so failing to appear in accordance with the prayer of the bill of complaint, or such other decree in the premises as to the Court shall appear meet and proper."

4.

That said suit to quiet title was brought against certain known individuals and corporations connected with the chain of title of complainants, naming them, and "all the unknown claimants of interest in the premises and lands hereinafter described adverse to complainants." Personal service was had upon the named defendants and proceedings to serve the remaining defendants were as follows:

In the District Court of the Fourth Judicial District, San Miguel County.

No. 4512.

GEORGE E. PRIEST et als.
vs.
JOHN H. TEITLEBAUM et als.

Affidavit for Publication.

TERRITORY OF NEW MEXICO,
County of San Miguel, ss:

John D. W. Veeder, being duly sworn, upon his oath states that he is the agent for George E. Priest, Melvin W. Quick and Charles M. Benjamin, the complainants in the above entitled cause; that James J. Fitzgerrell and Maria E. Fitzgerrell, his wife, two of the defendants in the above entitled cause, are not residents of the Territory of New Mexico, and their present place of residence and their whereabouts are to this affiant unknown; that the place of residence is unknown and the whereabouts cannot be discovered of any and all of the unknown successors in interest and unknown assigns of the defendant, the Fairview Town Company, and that the place of residence is unknown and the whereabouts cannot be discovered of any and all of the defendants designated as "Unknown claimants of interests in the premises and lands described in the bill of complaint who claim adversely to the complainants, George E. Priest, Melvin W. Quick and Charles M. Benjamin."

(Signed) JOHN D. W. VEEDER.

Subscribed and sworn to before me this 19th day of July, A. D. 1894.

[N. P. Seal.] ELMER E. VEEDER,
Notary Public.

182 In the District Court, County of San Miguel, September Term, A. D. 1894.

No. 4512.

GEORGE E. PRIEST, et als.
vs.
JOHN H. TEITLEBAUM, et als.

Notice of Publication.

The said defendants, John H. Teitlebaum, Lena J. Teitlebaum, his wife, Adolph Teitlebaum, the Fairview Town Company, the Unknown Successors in Interest and Unknown Assigns of the said Fairview Town Company, James J. Fitzgerrell and Maria E. Fitzgerrell, his wife, and the Unknown claimants of interests, in the lands and premises hereinafter described adverse to the complainants, are hereby notified that a suit in chancery has been commenced against you and each of you, in the District Court for the County of San Miguel, Territory of New Mexico, by the said complainants, George E. Priest, Melvin W. Quick, and Charles M. Benjamin.

The said complainants, in their bill of complaint ask the Court by its decree to establish and confirm to them their title in fee simple in and to the lands and premises mentioned and described in said bill of complaint, as follows, towit:—

Beginning at a point on the east bank of the Arroyo Pecos 19.17 chains west of the southeast corner of Section 23, in Township 16, north of Range 16 east, said point being marked with a blue limestone rock 6″ x 6″ x 18″ set in the ground and with a small triangle cut on the top; thence running south 3 degrees and 40′ west 5.93 chains; thence south 53 degrees east 36.50 chains; thence south 33 degrees east 21.90 chains; thence south 20 degrees east 37.46 chains; thence south 58 degrees east 12 chains; thence south 48 degrees and 30′ east 10.70 chains; thence east 66 chains; thence north 212.18 chains; thence west 155.16 chains, more or less, to the Arroyo Pecos; thence following the Arroyo Pecos to the place of beginning, by the following meanderings: South 34 degrees and 15′ west 20 chains; thence south 7 degrees west 18 chains; thence south 5 degrees and 15′ east 8 chains; thence south 8 degrees west 5.57 chains to the place of beginning: Free from and against any and all claim whatsoever of the said defendants, or any or either of them, or any adverse claim of said defendants, or any or either of them, and that each and all and every of the said defendants be barred and forever estopped from having or claiming any right or title in, and to, the said premises and tract of land hereinbefore described, adverse to the complainants, and that the title of complainants thereto, to the whole of the said tract of land be forever quieted and set at rest.

183 That unless you enter or cause to be entered your appearance in said suit in the office of the clerk of the District Court

of San Miguel County, on or before the 3rd day of September, the same being the first Monday in September, A. D. 1894, a decree pro confesso therein will be entered against you.

FELIX MARTINEZ, *Clerk.*

Veeder & Veeder, Solicitors for Complainants.

NOTE.—A similar Notice of Publication, but in the Spanish language, is also attached to the affidavit of the publisher.

TERRITORY OF NEW MEXICO,
County of San Miguel, ss:

I, Enrique H. Salazar, of said County of San Miguel, being duly sworn, say, that I am the Publisher of "El Independiente," a weekly newspaper, printed and published at Las Vegas, in the County and Territory aforesaid; and that the notice, of which the annexed is a true copy, has been published in said weekly newspaper in its issue of July 21st, 28th, August 4th, and 11th, 1894.

E. H. SALAZAR,
Publisher.

Sworn to and subscribed before me this 13th day of August, 1894.
[SEAL.] CHAS. F. RUDOLPH,
Probate Clerk.

The said proceedings were under the statute then in force, which is as follows:

"2964. When any plaintiff or complainant, his agent or attorney, in any civil cause pending, or hereafter commenced in any court of record in this territory shall file in the office of the clerk of said court, a sworn petition, bill of complaint, or affidavit, showing that the defendant, or any one or more of them in said cause, resides, or has gone out of the territory, has concealed himself within it, has avoided service of process on him, or is in any other manner so situated that process cannot be served upon him or them, or that his or their names, or place or residence is unknown, or that his or their whereabouts cannot be discovered; in such case it shall be the duty of the said clerk to publish a notice of the pendency of said cause, to said defendant or defendants in some newspaper published in the county where such cause may be pending, * * *"

184 5.

That appellees (Respondents) in their pleadings filed in the case at bar, make the following averments as to the Town of Las Vegas and the Las Vegas Grant as of the time when appellant's suit to quiet title was brought. Paragraph 22 of their answer and return and so-called counter-claim and additional defense, is as follows:

"22. That said Town of Las Vegas either at the date of said confirmation or at any time subsequent thereto had no representative upon whom legal process could be served, until the 9th day of De-

cember, 1902, when the Board of Trustees of the Town of Las Vegas, Respondents herein, was appointed."

In the latter part of paragraph 22 of the so-called counter-claim and additional defense of respondents we find the following:

"22. * * * After the cession of New Mexico to the United States and the change of sovereignty, the legal duties of Alcaldes and Justices of the Peace were so changed as to prevent such officers from continuing the political control, management and representation of the Town of Las Vegas and no officers were provided by law, after such change of sovereignty who had authority to continue in the control, management or representation of the said Town of Las Vegas or of the Ayuntamiento of San Miguel Del Bado and at the time of the institution of the said cause No. 4512 on the Docket of this Court there was no representative of the said Town of Las Vegas, upon whom legal process could be served, nor was there any such representative until the 9th day of December, 1902, when the Board of Trustees of the town of Las Vega, Respondents herein, was appointed."

6.

That afterwards on September 15th, 1894, after a final hearing of said cause to quiet title, the following decree was entered:

185 In the District Court of the Fourth Judicial District, Territory of New Mexico, County of San Miguel.

No. 4512.

GEORGE E. PRIEST et al.
vs.
JOHN H. TIETLEBAUM et al.

This cause coming on for final hearing before the Judge of said Court at Chambers in Las Vegas, New Mexico, upon the bill of complaint taken as confessed against all and each of the defendants and upon the testimony offered by the said complainants in support of the bill of complaint; and upon due consideration of the bill of complaint and the testimony offered by complainants in support thereof and after hearing J. D. W. Veeder, Esq., solicitor for the complainants, the court being now fully advised in the premises, doth find as follows:

First. That each and all of the allegations made by the complainants in their bill of complaint are true.

Second. That all of the defendants to the said cause, both known and unknown, and all persons who may have or claim any interest or title to the lands and premises set out and described in the bill of complaint, and hereinafter described, have been brought before the court by the proper process and are each and all properly made defendants to said bill of complaint, and that the service upon each and all of the parties defendant in said cause is in all respects and particulars in conformity to the law, and that the court has juris-

diction of each and all of the said defendants, whether known or unknown, and has jurisdiction of the subject matter of this suit.

Third. That the lands and real estate set out and described in the bill of complaint and hereinafter described, are a portion of and lie within the alleged exterior boundaries of that certain other and larger tract and grant of land, commonly known — the "Las Vegas Grant," which grant was made by the Government of Mexico in the year A. D. 1835, and was confirmed by an Act of the Congress of the United States, approved June 21st, 1860, and that said tract of land in consequence of said grant by the Mexican Government and confirmation by the Act of Congress of the United States was to the extent of said grant, as the same may be determined, segregated from the public domain and became and is the private property of the grantees and their privies.

Fourth. That the complainants, George E. Priest, Melvin W. Quick and Charles M. Benjamin, and their grantors, through whom they claim title and from whom they have deeds of conveyance purporting to convey an estate in fee simple, are now, and for more than ten years next preceding the commencement of this suit have been in the actual, exclusive, open, notorious, uninterrupted and adverse possession and occupation of the following described tract of land and premises and each and every part thereof, claiming to be the owners thereof, and under claim of title thereto, to wit:

That certain tract of land, situate, lying and being in the County of San Miguel and Territory of New Mexico, and bounded and described as follows:

186 Beginning at a point on the east bank of the Arroyo Pecos, nineteen and seventeen hundredths (19 & 17/100) chains west of the southeast corner of section twenty-three (23), in Township sixteen (16) north of Range sixteen (16) east; said point being marked with a blue limestone rock, six inches by six inches by eighteen inches (6" x 6" x 18") set in the ground and with a small triangle cut in the top, running thence south three (3) degrees and forty (40) minutes west 5.93 chains;

Thence South fifty-two (52) degrees East, 36.50 Chains;

Thence South 33 degrees East, 21.90 chains;

Thence South 26 degrees East, 37.46 chains;

Thence South 58 degrees East, 12 chains;

Thence South 48 degrees and 30 minutes East, 10.70 chains;

Thence East 66 chains;

Thence North 212.18 chains;

Thence west 155.16 chains, more or less to the Arroyo Pecos;

Thence following the Arroyo Pecos to the place of beginning by the following meanderings:—

South 34 degrees and 15 minutes West, 20 chains;

Thence South 7 degrees West, 18 chains;

Thence South five degrees (5) and 15 minutes East 8 chains;

Thence South eight (8) degrees west 5.57 chains to the place of beginning;

And that in consequence of such open, actual, exclusive, notorious, uninterrupted and adverse possession of the said tract of land and

each and every part thereof, for more than said period of ten years, next preceding the bringing of this suit, under the claim of ownership and title thereto, the said complainants are entitled to the relief prayed for in their bill of complaint, and are entitled to hold and possess the said tract of land and each and every part thereof in fee simple title, free from any and all claim, trouble, hinderance or obstruction on the part of any person whatsoever.

It is accordingly ordered, adjudged and decreed by the court:—

That the estate, right, title and interest of the complainants, and each of them, in and to the said tract of land and real estate to-wit:—

That certain tract of land, situate, lying and being in the County of San Miguel and Territory of New Mexico, and bounded and described as follows:—

Beginning at a point on the East Bank of the Arroyo Pecos, nineteen (19) and seventeen hundredths (17/100) chains west of the southeast corner of Section twenty-three (23), in Township sixteen (16) north of Range sixteen (16) east, said point being marked with a blue limestone rock, six inches by six inches by eighteen inches (6" x 6" x 18") set in the ground and with a small triangle cut in the top, running thence south three (3) degrees and forty (40) minutes west, 5.93 chains;

187 Thence South fifty-two (52) degrees East, 36.50 chains;

Thence South thirty-three (33) degrees East, 21.90 chains;

Thence South twenty-six (26) degrees East, 37.46 chains;

Thence South fifty-eight (58) degrees East, 12 chains;

Thence South forty-eight (48) degrees and thirty minutes (30) East, 10.70 chains;

Thence East sixty-six (66) chains;

Thence North two hundred and twelve and eighteen hundredths (212 & 18/100) chains;

Thence West one hundred and fifty-five and sixteen hundredths (155 & 16/100) chains, more or less, to the Arroyo Pecos;

Thence following the Arroyo Pecos to the place of beginning by the following meanderings:—

South thirty-four (34) degrees and fifteen (15) minutes, west, 20 chains;

Thence South seven (7) degrees West, 18 chains;

Thence South five (5) degrees and fifteen (15) minutes East, 8 chains;

Thence South eight (8) degrees West, five (5) and fifty-seven hundredths (57/100) chains to the place of beginning.

Is an estate in fee simple absolute, and the same is hereby confirmed and established in the complainants, and each of them, against any and all and every adverse claim of the said defendants, or any of them or of any person whatsoever, and the said defendants are, and each of them hereby is forever barred and estopped from having or claiming or asserting any right, title or interest or claim whatsoever in and to the said tract and parcel of land and real estate, or any portion thereof, adverse to the said complainants

or any of them, and the title of the said complainants and each of them in and to the above described tract of land and real estate, and each and every part thereof, is hereby forever quieted and set at rest.

THOMAS SMITH,
Chief Justice, etc.

Dated at Las Vegas, N. M., September 15th, A. D. 1894.

7.

That said decree was not appealed from and has never been reversed or vacated.

8.

That afterwards on December 9th 1902, upon petition of certain residents and citizens of Las Vegas, the District Court of San Miguel County appointed the Board of Trustees of the Town of Las Vegas Appellees (Respondents) herein.

188

9.

That subsequently the Legislative Assembly of New Mexico passed an Act, approved March 12th, 1903, to provide for the management of the Las Vegas Grant and for other purposes, Sections 7 and 10 of which are as follows:

"SECTION 7. This Act shall not interfere with or prejudice any vested rights in and to any of the lands embraced within the boundaries of the said Las Vegas Grant, or preclude a Judicial examination or adjustment thereof, and it is hereby made the duty of said board of trustees to make, execute and deliver deeds of conveyance to any and all persons who hold a title to any such lands, which became or was perfect or entitled them to the possession thereof at the time of the acquisition of New Mexico, under the treaty of Guadalupe Hidalgo, or at any other time subsequent thereto."

SECTION 10. That any and all appointments of trustees heretofore made by the district court of San Miguel County for the management of said Las Vegas Grant, and all acts and things done and performed by said district court of San Miguel County in assuming jurisdiction in managing, controlling and administering said Las Vegas Grant, is hereby ratified and confirmed."

10.

That in June 1906, Appellants (Relators), under the terms of the Legislative Act, just cited, made a written demand upon Respondents for a Quit-claim Deed to the premises in said Decree described, which was refused.

11.

That on the 4th day of September, following, the present mandamus proceeding was filed against Respondents, the Board of Trustees of the Town of Las Vegas, and an order thereupon issued against

them to show cause why they should not execute the said quit-claim deed, applied for and why a writ of mandamus should not issue, directed to them and each of them commanding them to execute said deed.

12.

That upon final hearing of said mandamus proceedings the Court below rendered the following judgment:

189 TERRITORY OF NEW MEXICO,
County of San Miguel, ss:

In the District Court of the Fourth Judicial District, Sitting Within and for San Miguel County for the Trial of Causes Arising under the laws of the Territory of New Mexico.

Ex Parte GEORGE E. PRIEST, MELVIN W. QUICK, and CHARLES M. BENJAMIN.

Petition for Mandamus to the Board of Trustees of the Town of Las Vegas.

Judgment.

This cause coming on to be heard upon the petition of the Relators asking for a mandamus against the Board of Trustees of the Town of Las Vegas, commanding and directing them to make and execute a deed of conveyance to them for certain lands mentioned and described in said petition, and upon the answer and counter-claim of the Respondents and the reply of the Relators thereto, and upon the testimony offered for and on behalf of the respective parties upon the hearing of said cause, and upon the argument of respective counsel for the parties hereto, and the Court being now fully advised in the premises does find as follows:

(I.)

That the statute of limitations did not begin to run against the Las Vegas Grant until after the passage of the Act of the Legislative Assembly of the Territory of New Mexico, of 1903, and the appointment of a Board of Trustees by this Court to manage and control the Las Vegas Grant.

(II.)

That the possession of relators and their predecessors in title for the period of ten years prior to the date of the passage of the said Act and the appointment of Trustees thereunder could not ripen into title against the said respondents.

Wherefore, it is accordingly ordered, adjudged and decreed by the Court, that the said decree in favor of relators of date September 15th, A. D. 1904, quieting title in said relators is not binding upon

the respondents herein and that the petition of relators is therefore dismissed.

Done in chambers at Las Vegas, New Mexico, this 26th day of February, 1910.

(Signed) WILLIAM J. MILLS,
Chief Justice, etc.

From which said judgment an appeal was taken by Relators and the case brought into this Court.

WILLIAM H. POPE,
Chief Justice.

190 And afterwards, on to wit, on the first day of the said regular term, the same being Wednesday the 3rd day of January, A. D. 1912, the following among other proceedings were had and entered of record to wit:

No. 1342.

Ex Parte Geo. E. Priest et als. (Relators), Appellants,
vs.
Board of Trustees of the Town of Las Vegas (Respondents), Appellees.

Appeal from District Court, San Miguel County.

Now comes John D. W. Veeder, Attorney of record for the appellant- herein, and moves the court to be granted an appeal from the judgment and decree of this court to the Supreme Court of the United States, and the court being sufficiently advised in the premises grants the said motion. It is therefore considered and adjudged by the court that the appellants herein do have an appeal from the judgment and decree of this court to the Supreme Court of the United States.

And afterwards, on to wit, *on* the First day of February, A. D. 1912, there was filed in the office of the Clerk of the Supreme Court of the State of New Mexico, an Assignment of errors on Appeal to the Supreme Court of the United States, which said Assignment of errors on Appeal was and is in the following words and figures, to wit:

191 In the Supreme Court of the United States.

No. 1342.

Ex Parte GEORGE E. PRIEST, MELVIN W. QUICK, and CHARLES M. BENJAMIN (Relators), Appellants,

vs.

BOARD OF TRUSTEES OF THE TOWN OF LAS VEGAS (Respondent), Appellees.

Assignment of Errors.

Come now Appellants in the above entitled cause and assign errors as follows:

1. The Court erred in holding that the District Court of San Miguel County in the suit to quiet title to the premises in question, had no jurisdiction of the Town of Las Vegas through service of publication upon "All the unknown claimants of interests the premises adverse to complainants," and that in consequence the Decree of September 15th, 1894, was not binding upon Respondents and Appellees here.

2. The Court erred in setting aside and ignoring in a collateral proceeding upon extraneous evidence the solemn adjudication in the decree of September 15th, 1894, by a Court of record, of its jurisdiction of all parties known and unknosn so as to enable it to quiet title against the world.

3. The Court erred in holding that the specific findings of the District Court of San Miguel County as to its jurisdiction of all parties, in the decree of September 15th, 1894, quieting title to the premises in question in Relators and appellants was less conclusive in this collateral proceeding than, to use the language of the opinion, "All the findings upon which that decree proceeds," whether properly made or not.

4. The Court erred in holding that any of the testimony presented by respondents and appellees at the trial of this proceeding in the Court below, was, under the state of the pleadings in the case, either properly admissable or material to contradict or im-
192 peach in this collateral proceeding any of the findings of the Court in the decree of September 15th, 1894, either as to jurisdiction of parties, the running o fthe statute of limitations or any other matter therein specifically adjudicated.

5. The Court erred in holding that because the Las Vegas Grant was, by Act of Congress, confirmed to the Town of Las Vegas, which, at the time of the institution of the suit to quiet title and the rendition of the decree of September 15th, 1894. Therein, is conceded to have had no corporate existence and could a "Known owner," in the sense that the words known and unknown are used when applied to claimants of property, and should have been made a party to such suit by name and served with notice by publication, not as an "unknown owner" but as a defendant "so situated that process could not otherwise be served upon it."

6. The Court erred in holding that the citation by publication of "all unknown claimants of interest in the premises adverse to complainants" did not operate to render the adjudication of September 15th, 1894, binding upon "the Board of Trustees of the Town of Las Vegas," notwithstanding that it brought before the Court all the beneficiaries of the Las Vegas Grant, with whom the Board of Trustees is in privity.

7. The Court erred in not holding that the decree of September 15th, 1894, was, in all respects, conclusive and binding upon it and all parties to this proceeding, and could neither be impeached nor contradicted by any extraneous evidence in this collateral proceeding.

8. The court erred in deciding the case upon grounds not properly raised by the pleadings and different from that upon which the case was tried and divided in the trial Court, and argued in the Supreme Court.

9. The Court erred in not passing upon Appellants' exceptions to the rulings of the Court below, upon the motion to strike
193 out parts of Respondents' answer and so called counter-claim and additional defense and the demurrers thereto.

10. The Court erred in not reversing the judgment of the Court below and remanding the case with instructions that a Writ of Mandamus issue as prayed for.

(Signed) VEEDER & VEEDER,
Las Vegas, N. M.

And Afterwards, On towit, *on* the seventh day of February A. D. 1912, there was filed in the office of the clerk of the Supreme Court of the State of New Mexico, an affidavit of value in the above entitled cause, which said affidavit of value was and is in the following words and figures towit:

In the Supreme Court of the State of New Mexico.

No. 1332.

Ex Parte GEORGE E. PRIEST, MELVIN W. QUICK, and CHARLES M. BENJAMIN (Relators), Appellants,

vs.

BOARD OF TRUSTEES OF THE TOWN OF LAS VEGAS (Relators), Appellees.

Appeal from District Court, San Miguel County.

Affidavit of Value.

STATE OF NEW YORK,
County of Tompkins, City of Illinois, ss:

George E. Priest being duly sworn upon his oath deposes and says that he is one of the Relators in the above entitled cause; that he knows the land and real estate in controversy in said proceedings by mandamus and the value thereof and that the same in the judg-

ment of this affiant is worth not less than the sum of Ten Thousand Dollars, ($10,000.)

(Signed) GEO. E. PRIEST.

Subscribed and sworn to before me this 2nd day of February A. D. 1912.

E. H. BOSTWICK,
Notary Public.

194 And afterwards on to wit, *on* the Seventh day of February, A. D. 1912, there was filed in the office of the Clerk of the Supreme Court of the State of New Mexico a supersedeas Bond in the above entitled cause, which said supersedeas Bond was and is in the following words and figures to wit:

In the Supreme Court of the State of New Mexico.

No. 1342.

Ex Parte GEORGE E. PRIEST, MELVIN W. QUICK, and CHARLES M. BENJAMIN (Relators), Appellants,

vs.

BOARD OF TRUSTEES OF THE TOWN OF LAS VEGAS (Respondents), Appellees.

Appeal from District Court, San Miguel County.

Appeal Bond.

Know all men by these presents: That we, George E. Priest as principal and Elmer E. Veeder and John D. W. Veeder, as his sureties, are held and firmly bound unto the Board of Trustees of the Town of Las Vegas, administering the Las Vegas Grant, in the penal sum of One Thousand Dollars ($1,000.00), lawful money of the United States, for the payment of which well and truly to be made we bind ourselves and our heirs, executors and administrators firmly by these presents.

Sealed with our seals and dated this 2nd day of February, A. D. 1912.

The conditions of the above obligation *is* such, that whereas in a certain proceedings for Mandamus pending in the Supreme Court of the State of New Mexico, said cause being numbered 1342 on the Docket of said court, in which proceedings, George E. Priest, Melvin W. Quick and Charles M. Benjamin are Relators, and the Board of Trustees of the Town of Las Vegas, Administering the Las Vegas Grant, are Respondents, the said Supreme Court denied the right of Relators to a writ of Mandamus; and

Whereas, the said Relators considered themselves aggrieved by the judgment and decision of said Supreme Court and have
195 taken an appeal therefrom to the Supreme Court of the United States and the Bond on such appeal has been fixed at the sum of One Thousand Dollars ($1000.00).

Now therefore, if these said Relators shall prosecute their said appeal with due diligence in the Supreme Court of the United States, and shall pay all costs that may be adjudged against them on such appeal, then this obligation to be null and void, otherwise to remain in full force and effect.

GEORGE E. PRIEST. [SEAL.]
ELMER E. VEEDER. [SEAL.]
JOHN D. W. VEEDER. [SEAL.]

STATE OF NEW MEXICO,
County of San Miguel, ss:

On this 5th day of February, A. D. 1912, before me personally appeared Elmer E. Veeder and John D. W. Veeder, to me known to be the persons described in and who executed the foregoing bond as sureties thereon and acknowledged that they executed the same as their free act and deed; and the said Elmer E. Veeder and John D. W. Veeder, being each severally sworn, upon their oath, did state, that they were worth the sum of One Thousand Dollars ($1000) over and above their just debts and liabilities and property by law exempt from execution.

Witness my hand and Notarial seal this 5th day of February, A. D. 1912.

(Signed) C. A. HUNKER, [SEAL.]
Notary Public.

My Commission expires Sept. 3, 1912.

STATE OF NEW YORK,
County of Tompkins,
City of Illinois, ss:

On this 2nd day of February, in the year one thousand nine hundred and twelve before me the subscriber personally appeared George E. Priest, to me known to be the same person described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

196 [SEAL.] (Signed) E. H. BOSTWICK.
My Commission expires March 30, 1912.

STATE OF NEW YORK,
Tompkins County, Clerk's Office, ss:

I, Albert O. Overacker, Clerk of the said County, and of the Supreme and County Courts thereof, being Courts of Record, do hereby certify that E. H. Bostwick, Esq., was at the date of proof of Acknowledgement of the annexed instrument, a Notary Public in and for said County, duly authorized and qualified to take the same; that I am well acquainted with the handwriting of said Notary Public, and verily believe that the signature to said certificate of acknowledgement is genuine, and that said instrument in executed and acknowledged according to the laws of the State of New York, to entitle it to be recorded therein.

In testimony whereof, I have hereunto set my hand and affixed

the seal of said County and Courts, at Ithaca this 2nd day of February, A. D. 1912.

A. H. OVERACKER, *Clerk.*

And heretofore, on to wit, *on* the 23rd day of January, A. D. 1912, there was filed in the office of the Clerk of the Supreme Court of the State of New Mexico, a precipe for record, which said precipe for record was and is in the following words and figures following to wit:

In the Supreme Court of the State of New Mexico.

No. 1342.

Ex Parte GEO. E. PRIEST, MELVIN W. QUICK, CHARLES M. BENJAMIN (Relators), Appellants,

vs.

BOARD OF TRUSTEES OF THE TOWN OF LAS VEGAS (Respondents), Appellees.

Appeal from District Court, San Miguel County.

Præcipe.

To Jose D. Sena, Clerk of the Supreme Court of the State of New Mexico:

197 Prepare transcript of record in the above entitled cause upon appeal to the Supreme Court of the United States of the following:

1. Petition for Mandamus and Exhibit "A" attached thereto, being all of Pages 2 to 12 inclusive and first paragraph of page 13 of the printed transcript of record in your Court.

2. Order to show cause why a Mandamus should not issue and the return of service thereof, being all of pages 13 to and including the first paragraph on page 17.

3. Answer of Respondents and the Exhibits "A" thereto attached beginning with the second paragraph on page 20 of said transcript, down to, "testimony" on page 40, then beginning at page 49 of said transcript and continuing to and including page 68 of said transcript to the testimony of Jose Francisco Salas," then beginning again on page 78 with "Surveyor General's Office" and continuing to "Exhibit B" on page 85 of said transcript.

4. Exhibit "B" attached to Answer of Respondents, beginning on page 85 of said transcript and continuing to Exhibit "C" on page 106 of said Transcript.

5. Exhibit "C" attached to answer of Respondents, beginning on page 106 of said transcript and continuing to page 118, including the two paragraphs at top of said last number page.

6. Counter-Claim of Respondents, beginning on page 118 and ending at bottom of page 128, likewise Exhibit "D" attached to said

Counter-claim beginning at page 129 and ending at middle of page 141 of said transcript.

7. Motion of Relators to strike from the files the answer of Respondents and the order of the Court overruling said Motion Pages 141-143.

8. The Demurrer of Relators to the Answer and return of Respondents, with the Order of the Court overruling said Demurrer Pages 144, 146.

9. Reply of Relators to the answer and return of Respondents beginning with page 147 and ending at last paragraph of page 152, of said transcript.

198 10. Motion of Relators to strike from the files the Counter-claim of Respondents and the Order of Court over-ruling said Motion Pages 152 to 155.

11. Demurrer of Relators to the Counter-Claim of Respondents and the order of Court over-ruling said Demurrer Pages 155-159.

12. Answer of Relators to the Counter-claim of Respondents, beginning at last paragraph on page 158 and continuing to last paragraph of page 164.

13. Reply of Respondents to the Answer of Relators to the Counter-claim, beginning at the middle of page 166 of said transcript and continuing to end of second paragraph of page 168.

14. Judgment of the Court below in the Mandamus proceedings, and Motion for a re-hearing with Order of Court overruling same, beginning on page 294 of said Transcript and ending with first paragraph at top of page 298.

15. Motion for an Appeal to the Supreme Court of New Mexico Order Granting said Appeal and fixing Bond for costs, Appeal Bond and citation.

16. Orders of record in Supreme Court.

17. Motion for rehearing & Assignment of errors in Supreme Court of the Territory.

18. Statement of Facts made by Supreme Court.

19. Appeal Bond.

20. This Præcipe.

21. Opinion of the Supreme Court of the Territory.

Attach to the Transcript thus prepared your certificate of Authentication.

VEEDER & VEEDER,
Attorneys for Relators, Las Vegas, N. M.

I hereby accept service of the within Præcipe by having received a copy of the same this 22nd day of January 1912 and waive the time for suggesting additions to said Transcript.

CHAS. A. SPIESS.
S. B. DAVIS, Jr.

199 And Afterwards, on towit, *on* the second day of January A. D., 1912, there was filed in the office of the clerk of the Supreme Court of the State of New Mexico, an opinion by the court in the above entitled cause, which said opinion by the court was and is in the following words and figures towit:

200 In the Supreme Court of the Territory of New Mexico, January Term, A. D. 1911.

No. 1342.

Ex parte GEO. E. PRIEST, MELVIN W. QUICK, and CHARLES M. BENJAMIN (Relators), Appellants,

vs.

BOARD OF TRUSTEES OF THE TOWN *of the Town* OF LAS VEGAS (Respondents), Appellees.

Appeal from District Court, San Miguel County.

Syllabus (by the Court).

1. Statutory provisions for the service of process upon unknown claimants by publication in actions to quiet title will be strictly construed.

2. If it be sought in such a case to bar the known confirmee of a grant such confirmee should be sued by name in the proceeding and not under the description of an unknown claimant.

3. The rule last stated applies notwithstanding the confirmee named is an unincorporated town, the latter being by the Congressional confirmation recognized and designated as an entity capable of receiving the title.

Opinion of the Court.

POPE, *C. J.:*

The appellants, Priest, Quick and Benjamin, brought proceedings in the district court of San Miguel county to require the Board of Trustees of the town of Las Vegas to execute to them a deed for a tract of land forming a part of what is known as the Las Vegas Land Grant. The petition is entitled one for mandamus, but it partakes in form rather of a petition to the court for an order on the trustees (who under the law are appointees of the court) to execute a deed.

The petition sets forth as the basis of the claim a certain decree rendered in the district court of San Miguel County, on Sept. 15, quieting plaintiffs' title to the tract in question. There were pleadings denying the force of this adjudication as binding on
201 *on* the defendant trustees and there was also a cross-complaint praying the quieting of defendant's title as against this alleged decree. Upon full hearing the court granted a decree dismissing plaintiff's petition. Some point is made upon the failure of the trial court to sustain a motion to strike out the cross complaint because having no place as a pleading defensive to mandamus. But assuming the proceedings to be in mandamus,—a matter as we have above noted not entirely clear—there was no prejudice to plaintiffs for the court below granted no relief upon the cross complaint,

the judgment entered being one merely denying the relief prayed and as we have seen dismissing the petition.

The gist of the whole cause in our judgment lies in the inquiry as to whether the decree of 1894 was binding against defendants. In this view of the matter much testimony that was produced at the trial and much that was argued in this court becomes immaterial. For instance a large part of the argument here was to demonstrate, contrary to what was held in the decree of 1894, that the statute of limitations could not, at the date of those proceedings run against the Las Vegas grant and in favor of plaintiffs, and that the title decreed in 1894 to plaintiffs proceeded upon a false premises in that it quieted title upon the statute of limitations when the status of the grant title was such that no rights by limitation could accrue. If, however, the court had jurisdiction, as against defendants to render the decree of 1894 all the findings upon which that decree proceeds are likewise conclusive against it and it avails nothing to inquire, as did the trial court, into whether such finding were as a matter of fact properly made. The whole question therefore, is whether the proceedings of 1894 bind the present defendants. The suit there filed was against certain named individuals (not here involved) and "all the unknown claimants of interest in the premises and lands hereinafter described adverse to complainants." It alleges plaintiffs to be the owners in fee simple of the premises here involved by virtue of adverse possession under color of title for the
202 statutory period preceding the bringing of the suit and it prays the quieting of title in plaintiffs.

There was the following allegation in the complaint:

"That the said tract of land lies within the exterior boundaries of that certain grant of land made by the government of Mexico in the year A. D., 1835 to Juan de Dios Maese and others, and known as the Las Vegas Grant, the said grant, as your orators are informed and believe, being made by the Mexican Government to the said Juan de Dios Maese and others for the use and benefit of the inhabitants and settlers of the Town of Las Vegas. That the said grant of land made by the Mexican Government to Juan de Dios Maese and others, was known in the archives of the Surveyor General of New Mexico, as private land claim Number twenty (20), and as such was, on June 21, 1860, duly confirmed by Act of Congress of the United States to the Town of Las Vegas, and thereby became segregated from the public domain of the United States."

The suit was brought under the provisions of statute now appearing as Sections 4010, 4011 of the Compiled Laws of 1897, reading as follows:

"An action to determine and quiet the title of real property may be brought by any one having or claiming an interest therein, whether in or out of possession of the same, against any person claiming title thereto. The plaintiff must file his bill of complaint in the district court, setting forth the nature and extent of his estate, and describing the premises as accurately as may be, and averring that he is credibly informed and believes that the defendant makes

some claim adverse to the estate of the plaintiff, and praying for the establishment of the plaintiff's estate against such adverse claims, and that the defendants be barred and forever stopped from having or claiming any right or title to the premises, adverse to the plaintiff, and plaintiff's title thereto be forever quieted and set at rest. Any or all persons whom the plaintiff alleges in his bill of complaint, he is informed and believes make claim adverse to the estate of plaintiff, the unknown heirs of any deceased person whom
203 plaintiff alleges in his bill of complaint, in his life time made claim adverse to the estate of the plaintiff, and all unknown persons who may claim any interest or title adverse to plaintiff, may be made parties defendant to said bill of complaint, by their names, as near as the same can be ascertained, such unknown heirs by the style of unknown heirs of such deceased person, and said unknown person who may claim an interest or title adverse to plaintiff by the name and style of unknown claimants of interests in the premises adverse to the plaintiff and service of process on, and notice of said suit against defendants, shall be made in the same manner as now provided by law in other civil suits."

The service by publication was under what now appears as C. L. 2964 which is as follows:

"When any plaintiff or complainant, his agent or attorney, in any civil cause pending, or hereafter commenced in any court of record in this territory shall file in the office of the clerk of said court, a sworn petition, bill of complaint, or affidavit, showing that the defendant, or any one or more of them in said cause, resides, or has gone out of the territory, has concealed himself within it, has avoided service of process on him, or is in any other manner so situated that process cannot be served upon him or them, or that his or their names, or place of residence is unknown, or that his or their whereabouts cannot be discovered; in such case it shall be the duty of the said clerk to publish a notice of the pendency of said cause, to said defendant or defendants, in some newspaper published in the county where the cause may be pending."

The regularity of the service is not here questioned. Default was adjudged and the cause went to final decree on Sept. 15, 1894.

The decree declares that plaintiff by reason of adverse possession under the statute is the owner in fee simple of the premises and his title is "confirmed and established in the complain-ts and each of them against any and all and every adverse claim of the said defendants or any of them or of any persons whatsoever and
204 and the said defendants are and each of them hereby is forever barred and estopped from having, claiming or asserting any right, title or interest or claim whatsoever in and to the said tract and parcel of land and real estate, or any portion thereof, adverse to the said complainants or any of them, and the title of the said complain-nts and each of them in and to the above described tract of land and real estate, and each and every part thereof is hereby forever quieted and set at rest."

Did this decree bind the present defendant, "The Board of Trus-

tees of the Town of Las Vegas"? The Board was not *eo nomine* a party nor indeed was it in existence in 1894. Any effect of the decree upon it must therefore result from its holding under some party to the cause. That it does not hold under any of the individuals named is conceded. That it is not affected by the futile provision of the decree quieting title against "any person whatsoever" is evident. The only remaining alternative is that it is bound because of the fact that "all the unknown claimants of interests in the premises adverse to complainants" are named in the complaint, were cited in the publication and were decreed against in the court's disposition of the case and that this was a binding adjudication against defendant under C. L. 4011 above quoted. But in 1894, were the owners of the Las Vegas Grant, whom defendant now represents, unknown owners? The complainants certainly knew the exact status of the matter for their complaint, as we have seen, in terms alleged that the premises were a part of the Las Vegas grant "on June 21, 1860 duly confirmed by Act of Congress of the United States to the town of Las Vegas."

The complainants thus knew that the Town of Las Vegas was the confirmee of the grant and that if complainants' title had, by adverse possession, been wrested from any one it was from such confirmee. Knowing this, we are of opinion that it was their duty to have made the Town of Las Vegas a party, and that the term "unknown owners" could not be utilized to divest title from what the Act of Congress, no less than plaintiffs' conceded knowledge, told them was the true ownership of the property. Statutes pro-
205 viding for constructive service are subject to grave abuse. They are of course necessary, since without them titles could never be quieted or proceedings in rem maintained against nonresident or truly unknown parties. But it is a matter of judicial knowledge that a published summons in the vast majority of cases fails to reach those to whom addressed and that property is taken with but a theorotical opportunity for the hearing which is an essential of due process of law. Considerations such as these last named lead the courts to insist upon a strict construction of such statutes and to hold that where the real owner may be brought into court by name his property may not be taken by an advertisement against unknown owners. Whereas, as in this case, the locus of the title is definitely declared of record and such is confessedly known to the complainant, it is but an exaction of good faith that the holder of such title should be summoned by name in order that it may appear and defend. To exact less is to open the doors wide to insidious attacks upon property rights, and indeed to ignore the statute which in terms provides (C. L. Sec. 4011) that persons claiming interests "may be made parties defendant by their names, as near as the same can be ascertained."

The cases upon this particular subject are not numerous but among these Ware v. Easton 46 Minn. 180, is very close to the point, in that case it is said:

"It is claimed that the summons was defective in not naming

Homan the patentee of the land, as one of the defendants; and we think this objection well taken. In so far as the records disclosed, he was the owner of the government title. The defendant was bound to take notice that Homan was the patentee of the land, as well from the government records as those of the county. The important provisions of this statute, as a means of notice to the unknown claimants, are the designation of the names of interested parties who are known and those who appear such by the records together with the publication of the notice of *lis pendens* containing a description of the land, and the record of the same. If
206 the land appears to have been entered by Homan, and his grantees, if any, are unknown and not disclosed by the records, the most effectual notice to those claiming under him would be to name him, in connection with the general designation of such unknown claimants. The statute must be strictly construed and followed, and it is enough that it requires such parties to be specifically named. If any one appearing by the record to be the owner of the patent title under the original owner is designated, of course it would not be necessary to name any preceding owner under whom he claimed; but he who appears to be the owner of record must be named, unless the actual holder of the title can be discovered and named; that is to say, if it be desired to bind unknown parties claiming some right or interest derived from or under the original patentee of the United States. The same rule would apply, *mutatis mutandis*, to parties claiming a separate title under the state through tax-sales. The statut- was not complied with in the case under consideration here. The notice was insufficient to bind Braggs, the owner of the patent title at that time, and the judgment is void as to him and those claiming under him."

It is said by plaintiffs, however, that the designation of the ownership of the Las Vegas grant as "Unknown claimants" was justified upon the grounds that the town of Las Vegas as used in the act of confirmation, was a mere aggregation of people without corporate organization, and that the suit became thus one practically against the individuals residing on the grant and that as to these the designation of unknown owners was necessary and proper. It is further said that there was no officer upon whom process might be served. We are not, however, impressed with these contentions. Much that is here said upon the subject was ineffectually urged to the Supreme Court of the United States in Maese v. Hermann, 183 U. S. 572, where it was contended that the Town of Las Vegas could not take the patent to the grant, because it was without legal or corporate existence, a nonentity. The court held, however, that "the
207 town and its inhabitants were certainly substantial entities in fact and were recognized by congress as having rights and directed such rights to be authenticated by a patent of the United States" and patent issued accordingly.

To the claim that there was no officer of the town upon whom process might be served the obvious answer exists that under C. L. 2964, then in force, service by publication could be made since in

that event the defendant "was so situated that process could not otherwise be served upon it."

The judgment is affirmed.

WILLIAM H. POPE,
Chief Justice.

We Concur:
JOHN R. McFIE, *A. J.*
FRANK W. PARKER, *A. J.*
MERRITT C. MECHEM, *A. J.*
E. R. WRIGHT, *A. J.*
CLARENCE J. ROBERTS, *A. J.*
IRA A. ABBOTT, *A. J.*

208 STATE OF NEW MEXICO,
Supreme Court, ss:

I, Jose D. Sena, Clerk of the Supreme Court of the State of New Mexico, do hereby certify that the above and foregoing 207 pages contain a full, true and complete and correct transcript of the record and proceedings, pleadings and opinions in the above entitled cause as designated by the Præcipe herein filed and attached hereto which hereby is transmitted to the Supreme Court of the United States in accordance with an appeal granted herein by the Supreme Court of the Territory of New Mexico.

Witness My hand and the seal of the Supreme Court of the State of New Mexico, this the 10th day of February A. D., 1912.

[Seal Supreme Court, Territory of New Mexico.]

JOSÉ D. SENA,
Clerk Supreme Court of New Mexico.

209 United States of America to the Board of Trustees of the Town of Las Vegas, in the County of San Miguel, State of New Mexico, Greeting:

You are hereby cited and admonished to be and appear at a term of the Supreme Court of the United States, to be holden at Washington within sixty days from the date hereof, pursuant to an appeal taken from the Supreme Court of the Territory of New Mexico, in that certain cause wherein George E. Priest et al, were appellants and the Board of Trustees of the Town of Las Vegas were appellees, to show cause, if any there be, why judgment rendered against the said appellant as the said appeal mentioned, should not be corrected, and why speedy justice should not be done in that behalf.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States and the Seal of the Supreme Court of the State of New Mexico this the 9th day of February A. D. 1912.

[Seal Supreme Court, Territory of New Mexico.]

CLARENCE J. ROBERTS,
Chief Justice Supreme Court of N. M.

We, the undersigned, hereby acknowledge service upon us of a copy of the above and foregoing citation, this 12th day of February, A. D. 1912.

CHAS. A. SPIESS,
S. B. DAVIS, JR.,
Attorneys for Appellees.
BOARD OF TRUSTEES OF THE TOWN OF LAS VEGAS,
By FRANK ROY, *Secretary.*

210 In the Supreme Court of the United States.

Exp Parte GEORGE E. PRIEST, MELVIN W. QUICK and CHARLES M. BENJAMIN (Relators), Appellants.

VS.

BOARD OF TRUSTEES OF THE TOWN OF LAS VEGAS (Respondants), Appellees.

Assignment of Errors.

Come now Appellants in the above entitled cause and assign errors as follows:

1. The Court erred in holding that the District Court of San Miguel County in the suit to quiet title to the premises in question, had no jurisdiction of the Town of Las Vegas through service of publication upon "All the unknown claimants of interests in the premises adverse to complainants", and that in consequence the Decree of September 15th, 1894, was not binding upon Respondents and Appellees here.

2. The Court erred in setting aside and ignoring in a collateral proceeding upon extraneous evidence the solemn adjudication in the decree of September 15th, 1894, by a Court of record, of its jurisdiction of all parties known and unknown so as to enable it to quiet title against the world.

3. The Court erred in holding that the specific findings of the District Court of San Miguel County as to its jurisdiction of all parties, in the decree of September 15th, 1894, quieting title to the premises in question in Relators and appellants was less conclusive in this collateral proceeding than, to use the language of the opinion, "All the findings upon which that decree proceeds", whether properly made or not.

4. The Court erred in holding that any of the testimony presented by respondants and appellees at the trial of this proceeding in the Court below, was, under the state of the pleadings in the case, either properly admissable or material to contradict or impeach in this collateral proceeding any of the findings of the Court in
211 the decree of September 15th, 1894, either as to jurisdiction of parties, the running of the statute of limitations or any other matter therein specifically adjudicated.

5. The Court erred in holding that because the Las Vegas Grant was, by Act of Congress, confirmed to the Town of Las Vegas, which, at the time of the institution of the suit to quiet title and the rendition of the decree of September 15th, 1894, therein, is conceded to have had no corporate existence and could not therefore be personally served with process, was nevertheless a "known owner", in the sense that the words known and unknown are used when applied to claimants of property, and should have been made a party to such suit by name and served with notice by publication, not as an "unknown owner" but as a defendant "so situated that process could not otherwise be served upon it."

6. The Court erred in holding that the citation by publication of "all unknown claimants of interest in the premises adverse to complainants" did not operate to render the adjudication of September 15th, 1894, binding upon "the Board of Trustees of the Town of Las Vegas", notwithstanding that it brought before the Court all the beneficiaries of the Las Vegas Grant, with whom the Board of Trustees is in privity.

7. The Court erred in not holding that the decree of September 15th, 1894, was, in all respects, conclusive and binding upon it and all parties to this proceeding, and could neither be impeached nor contradicted by any extraneous evidence in this collateral proceeding.

8. The Court erred in deciding the case upon grounds not properly raised by the pleadings and different from that upon which the case was tried and decided in the trial Court, and argued in the Supreme Court.

9. The Court erred in not passing upon Appellants' exceptions to the rulings of the Court below, upon the motion to strike out parts of Respondents' answer and so called counter-claim and
212 additional defense and the demurrers thereto.

10. The Court erred in not reversing the judgment of the Court below and remanding the case with instructions that a Writ of Mandamus issue as prayed for.

VEEDER & VEEDER,
Las Vegas, New Mexico.

Endorsed on cover: File No. 23,107. New Mexico Territory Supreme Court, Term No. 218, George E. Priest, Melvin W. Quick and Charles M. Benjamin, appellants, vs. The Board of Trustees of the Town of Las Vegas, in the County of San Miguel, New Mexico. Filed March 19th, 1912. File No. 23,107.

(23,107)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 218.

GEORGE E. PRIEST, MELVIN W. QUICK, AND CHARLES M. BENJAMIN, APPELLANTS,

vs.

THE BOARD OF TRUSTEES OF THE TOWN OF LAS VEGAS, IN THE COUNTY OF SAN MIGUEL, NEW MEXICO.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO.

STATEMENT OF THE CASE

This is a proceeding by petition for a mandamus directed to the Board of Trustees of the Town of Las Vegas, commanding them to make execute and deliver to Relators (Appellants) a deed of conveyance for a tract of land, situated in the County of San Miguel, Territory of New Mexico, within the boundaries of the Las Vegas Land Grant. The Petition was filed in the District Court of San Miguel County, New Mexico, September 4, 1906, and avers that Relators between the years 1888 and 1894 acquired the said land by purchase from its then owners and occupants and afterwards brought suit to quiet title thereto, and said title by a decree of the District Court of San Miguel County of September 15, 1894, was established in Relators as an estate in fee simple, absolute against any and all claims of any person whatsoever. (Finding of Fact 6. Trans. p. 104). That by virtue of an act of the Legislative Assembly of the Territory of New Mexico, entitled "An Act Providing for the Management of the Las Vegas Grant and for other Purposes," approved March 12, 1903, it was made the duty of the Board of Trustees of the Las Vegas Grant "To make, execute and deliver deeds of conveyance to any and all persons, who hold a title to any of the lands of the Grant which became or was perfect, or entitled them to the possession thereof at the time of the acquisition of New Mexico under the Treaty of Guadalupe Hidalgo, *or at any other time subsequent thereto.*" (Finding of Fact 9. Trans. p. 107). That Relators accordingly made application to said Trustees for a deed to the land con-

firmed to them by Decree of Court, who declined to issue it, wherefore they prayed for a writ of Mandamus commanding them to do so. (A copy of decree of September 15, 1894, was attached to said petition as an exhibit.)

Upon filing this petition an order to show cause was issued against Respondents, who as a return thereto filed an "answer to Relators' petition" and a so-called "counter claim and as an additional defense."

The Answer (Trans. p. 9.) after denying the title of Relators, and the language and effect of the decree of September 15, 1894, gives a detailed recital of the action taken respecting the Las Vegas Grant by the Government Officials and the various groups of Claimants from 1858 to 1902 when Respondents were appointed Trustees to manage it. Thus, allusion is made to the investigation of the Grant by the Surveyor General of New Mexico in 1858 and the forwarding of his report and findings with all documents pertaining thereto to the Commissioner of the General Land Office and its transfer thereafter to Congress and Confirmation June 21, 1860; the instructions issued by the Land Department July 26, 1860, to the Surveyor General directing him to make a survey of the Grant to determine its area so that the Baca Claimants might be given a certificate of the area they were to select in five separate parcels, the two areas to be equal; the Pelham Survey of 1861, approved by the Surveyor General, but not by the Commissioner of the General Land Office or Secretary of the Interior, fixing the area at 496,446.96 acres, for which area a certificate was issued to the Baca Claimants and locations thereunder made and approved by the proper officers of the Government; the issuance thereafter of Territorial Maps by the Government with the Grant located upon them, according to said survey as a confirmed Grant; the recommendation on March 22, 1887, of George W. Julian then Surveyor General that a re-survey of the Grant be made, because, in his opinion, it could not legitimately embrace more than 20,000 acres and the ordering of such re-survey November 5, 1887, by the Commissioner of the General Land Office, which survey was begun but never completed; the review February 1, 1890, of the Julian recommendations by Edwards S. Hobart, then Surveyor General, and his disapproval of them and recommendation that a patent issue to the Town of Las Vegas, according to the Pelham Survey of 1861; the action thereupon on December 5, 1891, of John W. Noble, the then Secretary of the Interior, in ordering a re-survey of the Grant in accordance with the recommendations of Julian; the petition of certain persons claiming to act for and on behalf of the Town of Las Vegas for a review and reversal of the said ruling of the Department of the Interior and the denial of same on May

16, 1894, by Hoke Smith, then Secretary of the Interior, and his order that a patent issue in accordance with the decision of Noble; the action on December 17, 1898, of Thos. E. Ryan, then acting Secretary of the Interior, in revoking and setting aside the decision and order of Noble and directing the Commissioner of the General Land Office to take such action as might be necessary for the issuance of a patent to the Town of Las Vegas for the full quantity of land embraced within the boundaries set forth in the original petition for the Grant; the Petition of P. Milheiser, for himself and other persons claiming to be the Grantees of the Las Vegas Grant filed with the Commissioner of the General Land Office in 1890, asking that a patent to the Grant be issued to them or their predecessors in interest and how from that time continuously to January 6, 1902, litigation was being instituted and carried on before the Secretary of the Interior and Commissioner of the General Land Office and the District and Supreme Courts of the District of Columbia, and the Supreme Court of the United States, between the various claimants of the Grant, as to who were the real parties in interest and to whom the patent should issue and what area it should embrace. (January 6, 1902, is the date of the decision of this Court in the case of Maese vs Herman, holding that the patent should issue in accordance with the act of Congress confirming the Grant to the "Town of Las Vegas." Maese vs. Herman 183 U. S. 572.)

Then follow averments that in 1889 and 1900 the Commissioners of the General Land Office caused a re-survey of the Grant to be made by one Frank M. Johnson and the area determined to be 431,653.65 acres upon which on June 27, 1903, a patent issued; that the exterior lines of each of the several surveys were different and that at the time of the institution and prosecution of the suit to quiet title, Plaintiffs in that suit (Relators and Appellants here) had knowledge of all of the facts hereinbefore stated. Paragraphs 22 and 23 of this Answer (Trans. p. 13.) we give in full because of their importance in determining the issue attempted to be raised.

"22. That said Town of Las Vegas, either at the date of said confirmation or at any time subsequent thereto, had no legal representative upon whom legal process could be served until the . . . . . day of . . . . . , 1902, when the Board of Trustees, Respondents herein was appointed." (Finding of Fact 5, Trans. p. 103.)

"23. That neither Respondents nor said Town of Las Vegas was a party to said suit to quiet title in the petition in this action set out, and in said suit no process was issued against, nor was any served upon said Town of Las Vegas or the Respondents herein."

The Answer then concludes with a disclaimer on the part of Respondents of any personal interest in the lands in controversy, being merely, as Trustee, vested with its management and control. Three exhibits are attached, covering pages 14 to 52 inclusive of the transcript.

Relators moved to strike this answer from the files, because it contained irrelevant and redundant matter, and was an attempt to impeach the judgment and decree quieting title, which is conclusive upon Respondents in a collateral proceeding, such as mandamus (Trans. p. 65.). This the Court overruled (Trans. p. 66.). They then demurred upon the same grounds (Trans. p. 67.). This was also overruled (Trans. p. 68.).

The so-called counter-claim and additional defense of Respondents (Trans. p. 53.), is in the nature of a cross bill in equity to remove from the lands in question the cloud of Relators' title and prays that the decree in favor of Relators be vacated and the title quieted in Respondents. With the single exception of the commencement and conclusion this pleading contains as grounds for this relief the same allegations of fact as the answer and in the same language. This, too, Relators moved to strike out (Trans. p. 72.) and being overruled (Trans. p. 73.) demurred (Trans. p. 73.) and were again overruled (Trans. p. 75.) the grounds in each being the same; viz. that the pleading constituted no defense and no lawful return and was not permissible as a defense by way of cross bill or counter-claim to a mandamus proceeding. Exceptions were taken to each of the above four rulings of the Court and assigned as error on appeal to the Supreme Court of the State (Trans. p. 89. Error 1. 2- 3. 4.) but not passed upon there and such failure is assigned as error here (Trans. p. 111. Error 9.)

Relators then filed without objection a reply to the answer (Trans. p. 68) and an answer to the counter-claim (Trans. p. 75.) of Respondents, in each of which they re-affirmed the character of their title as stated in their petition; deny that the Pelham Survey was not approved by the Commissioner of the General Land Office and Secretary of the Interior; deny that Milheiser and his associates represented the Town of Las Vegas, but assert they claimed to be the successors and assigns of the original Grantees and distributees prior to the Treaty of Cession, and that with the exception of the Julian Survey and efforts made to defeat it, all the litigation with reference to the Grant, turned upon the question as to who were Grantees and proper claimants under the Act of Confirmation; some contending that all of the inhabitants of the community called the Town of Las Vegas, were meant; others that it was the original petitioners for the Grant and those who had receiv-

ed allotments down to the date of the Treaty, and others still that the original petitioners alone were intended.

On the subject of their knowledge of proceedings affecting the Grant at the time of the institution of their suit to quiet title, Relators admit they knew of the procceedings before the Surveyor General, the Act of Confirmation and the Pelham Survey, but because the Confirmee designated as the Town of Las Vegas had no legal or corporate existence, they could not know it or that such an entity either owned or claimed the Grant. However, they did know that the inhabitants of the unincorporated community of Las Vegas were the owners and claimants of interests in the Grant, but who and how many such there were or their where-abouts was unknown, both to Relators and their representatives. As to paragraph 22, they say:

"12. Replying to paragraph 22 of said answer and return, Relators admit the same and aver further that the said Town of Las Vegas was not an incorporated Town, either at the date of the said Confirmation, or at any time subsequent thereto. They deny, however, that because of this legal process could not be served by publication under the Statutes of New Mexico against the inhabitants of the said Town of Las Vegas, the real parties in interest and beneficiaries under the said Act of Confirmation."

Paragraph 23 is categorically denied.

Upon this state of the pleadings the case went to trial and on February 26, 1910, judgment was rendered dismissing the petition of Relators, because the Statute of Limitations did not begin to run against the Las Vegas Grant until after the passage of the Act of the Legislative Assembly of the Territory of New Mexico of 1903, and the appointment of a Board of Trustees by the Court to manage and control it and the possession of Relators and their predecessors in title for the period of ten years prior thereto could not ripen into title against Respondents. (Trans. p. 108, Finding of Fact 12.)

From this judgment Relators appealed to the Supreme Court of the State, assigning for further error the findings that the Statute of Limitations did not begin to run until after the appointment of Trustees; that possession of ten years prior thereto could not ripen into title and that the decree of Sep. 15, 1894, was not binding upon Respondents (Trans. p. 90. Errors 5.6.7.).

The Supreme Court, upon a hearing, affirmed the judgment of the Court below "For reasons stated in the opinion of the Court on file." (Trans. p. 92.). From this judgment the case is brought by appeal into this Court by Relators (Appellants.)

ERRORS RELIED UPON.

1. The Court erred in holding that the District Court of San Miguel County in the suit to quiet title to the premises in question, had no jurisdiction of the Town of Las Vegas through service of publication upon "All the unknown claimants of interests in the premises adverse to complainants," and that in consequence the decree of September 15, 1894, was not binding upon Respondents and Appellees here.

2. The court erred in setting aside and ignoring in a collateral proceeding upon extraneous evidence the solemn adjudication in the decree of September 15, 1894, by a Court of record, of its jurisdiction of all parties known and unknown so as to enable it to quiet title against the world.

3. The Court erred in holding that the specific findings of the District Court of San Miguel County as to its jurisdiction of all parties, in the decree of September 15, 1894, quieting title to the premises in question in Relators and appellants was less conclusive in this collateral proceeding than, to use the language of the opinion, "All the findings upon which that decree proceeds," whether properly made or not.

5. The Court erred in holding that because the Las Vegas Grant was, by Act of Congress, confirmed to the Town of Las Vegas, which, at the time of the institution of the suit to quiet title and the rendition of the decree of September 15, 1894, therein, is conceded to have had no corporate existence and could not therefore be personally served with process, was nevertheless a "known owner," in the sense that the words known and unknown are used when applied to claimants of property, and should have been made a party to such suit by name and served with notice by publication, not as an "unknown owner" but as a defendant "so situated that process could not otherwise be served upon it."

6. The Court erred in holding that the citation by publication of "all unknown claimants of interest in the premises adverse to complainants" did not operate to render the adjudication of September 15, 1894, binding upon "the Board of Trustees of the Town of Las Vegas," notwithstanding that it brought before the Court all the beneficiaries of the Las Vegas Grant, with whom the Board of Trustees is in privity.

7. The Court erred in not holding that the decree of September 15, 1894, was, in all respects, conclusive and binding upon it and all parties to this proceeding, and could neither be impeached nor contradicted by extraneous evidence in this collateral proceeding.

8. The Court erred in deciding the case upon grounds not properly raised by the pleadings and different from that upon

which the case was tried and decided in the trial Court and argued in the Supreme Court.

9. The Court erred in not passing upon Appellants' exceptions to the rulings of the Court below, upon the motion to strike out parts of Respondents' answer and so called counterclaim and additional defense and the demurrers thereto.

10. The Court erred in not reversing the judgment of the Court below and remanding the case with instructions that a writ of Mandamus issue as prayed for.

ARGUMENT.

Preliminary to taking up the consideration of the points of law and fact, it should be remarked that no attack is made by Appellees upon the petition for Mandamus. The right to the relief demanded, the correctness of this mode of procedure to obtain it and its sufficiency for that purpose are conceded. The view of the Supreme Court as to it, is therefore *obiter dictum* (Trans. p. 116.)

Likewise no fraud is charged in obtaining the decree of September 15, 1894, quieting title in Appellants.

Nor is the service by publication in the suit in which such decree was rendered, as to procedure, regularity or sufficiency challenged. It is admitted to be ample to render the decree binding upon Appellees had it been possible upon their theory to obtain jurisdiction of them through the service of legal process.

This being a proceeding by Mandamus to have the title decreed to Appellants authenticated by a deed of conveyance, is obviously a collateral proceeding akin to enforcing satisfaction of a judgment and Appellees are therefore concluded by the decree.

Vanfleet Collateral Attack Sec. 3. Supervisors vs United States 4 Wall. 435. (444). The Mayor vs Lord 9 Wall. 409. (413). The Supervisors vs Durant 9 Wall. 415 (417). Franklin County vs German Savings Bank. 142 U. S. 93. (98—101).

And where, as here, the judgment quieting title discloses the fact that the matter of jurisdiction of the parties has been considered and determined by the Court, such determination is as conclusive upon the parties in a collateral proceeding as any adjudication of the Court can be.

Freeman on Judgments 3rd Ed. Sec. 130, 23 Cyc. 1084. Foster et al vs Givens 67 Fed. 684. (690—691). Scudder et al vs Cox et al 80 S. W. 872. Brawley et al vs Ranney 67 Mo. 280. Reedy et al vs Camfield et al 42 N. E. 833. Cincinnatti S. & C. R. Co. vs Village of Belle Centre 27 N. E. 464. Winemiller vs

In Re Harper 133 Fed. 970.

Laughlin et al 38 N. E. 111. McCauley vs Fulton 44 Cal. 355, Bickerdike vs Allen 41 N. E. 740.

The above propositions of law are so well established that only a citation of the more important authorities is necessary. As we view this case they are decisive of every phase of it.

We will consider the points raised in the order in which they appear in the Supreme Court's Opinion.

STATUTE OF LIMITATIONS.

This is the only issue raised by the pleadings, as we will hereafter show, and the one upon which the case was tried and determined by the trial Court. In its opinion (Trans. p. 117) the Supreme Court says on the subject, that much testimony produced at the trial and much that was argued before it was immaterial, because it related to the running of the Statute of Limitations, which under the decree of 1894 had been determined to the contrary of Appellees contention. (Finding of Fact 6, Trans. p. 104). Then without further discussion it dismisses the subject entirely in this language;

"If however, the Court had jurisdiction, as against defendants to render the decree of 1894, all findings upon which that decree proceeds are likewise conclusive against it and it avails nothing to inquire, as did the Trial Court, into whether such findings were as a matter of fact properly made."

This is a clear recognition of the principles of law we have announced and a correct application of them, we think, to that portion of the decree. With nothing more before it, this should have ended the case.

SERVICE BY PUBLICATION.

But evidently bent upon an affirmance of the judgment before it on some ground it then seizes upon the service made by publication and discusses the question of jurisdiction of defendants obtained through it, in the proceeding to quiet title, when as stated by us at the outset, this service was in no manner assailed. After a somewhat extensive argument more technical than logical, covering the larger part of the opinion, it reaches the conclusion that the service by publication was defective, in that it proceeded against the Town of Las Vegas as an "Unknown Claimant," when in fact it was "Known" at the time the suit to quiet title was instituted, and so finds. In doing this, it disregards the fact that the decree of 1894 adjudicates the jurisdiction of all the defendants both known and unknown and the appropriateness, legality, and sufficiency of the service to acquire such jurisdiction, in these words;

POOR COPY

"Second. That all the defendants to this cause, both known and unknown, and all persons who may have or claim any interest or title to the lands and premises set out and described, in the bill of complaint, and hereinafter described, have been brought before the Court by the proper process and are each and all properly made defendants to said bill of complaint, and that the service upon each and all of the parties defendant in said cause is in all respects and particulars in conformity to the law, and that the Court has jurisdiction of each and all of the said defendants, whether known or unknown and has jurisdiction of the subject matter of this suit."

This finding and adjudication is as full and positive on the subject of which it treats as that respecting the Statute of Limitations which the Court says cannot be inquired into. We will concede that if the Court had jurisdiction of defendants, all findings upon which the decree proceeds are conclusive against them. But this concession is no proof that the Court may not determine the question of jurisdiction of parties in the same manner as it determines other facts in issue in the case and make findings as to such jurisdiction and that these findings when so made are not as binding and conclusive upon the Court in a collateral proceeding, as, to use the language of the opinion "All findings upon which that decree proceeds." If we are correct in this, the Supreme Court was in no better position to take up and consider the matter of the service on defendants than was the Lower Court to consider the matter of the Statute of Limitations.

We know of no distinction between findings as to jurisdiction and findings as to other matters in issue in the suit, and the Court in its opinion refers to none. The law which here bars the consideration of the one, must necessarily bar the consideration of the other. We submit therefore that the question of the jurisdiction of the defendants through service by publication, having been adjudicated in the decree of 1894 was likewise conclusive upon the Court and not subject to attack in this collateral proceeding, whether as matter of fact it was in issue or not.

Thompson vs. Thompson 226 U. S. 552.

SERVICE BY PUBLICATION NOT AN ISSUE.

The further objection to its consideration is the fact that it was not an issue. The pleadings in Mandamus raise the sole issue of the date at which after the Act of Confirmation of June 21, 1860, the Statute of Limitations of New México began to run. Appellees deny the ability of Appellants to acquire title to land of the Grant by adverse possession for the statutory period, at any time between 1860 and 1902 the date of

their appointment. To support such denial, allegations are made to demonstrate; first, that the status of the Grant Title was such during this period that no rights by limitation could accrue, and, second, that the status of the Town was such that no rights by limitation could be adjudicated against it, because of the impossibility of serving it with *legal process*. When then the Court dismissed Appellees contention as to the Statute of Limitations there was nothing left, it would seem, but to reverse the judgment of the Lower Court and remand it with instructions to grant the writ. It could not, as was done, go outside of the record and of its own motion raise an issue as to the sufficiency of the service upon the defendants in the suit to quiet title, when under the pleadings such issue is in express language excluded by Appellees from the Court's consideration. (Finding of Facts 5, Trans. p. 103). Service with *legal process* embraces service in any and every manner provided by law, whether personal or by publication. When then Appellees declare that during the period above mentioned the Town of Las Vegas could not be served with legal process, they exclude all service and take from the Court the consideration under such declaration of any service by publication, whether perfect or otherwise.

But it will doubtless be claimed that paragraph 23 of both the answer and return and counter-claim disproves this. (Trans. p. 13, 57.) Does it do so? No. 22 which we have been considering and No. 23 read together, stand in the relation to each other of cause and effect. Because no legal process could be served upon the Town it was not made a party and no process was issued against or served upon it. Reading them as separate and distinct statements of facts the former excuses the doing of the things complained of in the latter and leaves no issue for determination. Viewed in any light the conclusion above reached seems inevitable.

REASONING AS TO KNOWN OWNERS.

The fallacy of the Court's reasoning as to the Town of Las Vegas being a known owner and claimant of the Grant in 1894, lies in the fact that it makes knowledge by Appellants of the mention of the Town, as Grantee, in the Act of Confirmation of 1860 proof of knowledge of the existence of the Town at that date, as a legal entity, capable of claiming, owning and controlling the Grant and of suing and being sued respecting it and then by some undisclosed line of presumptions or deductions or both bringing knowledge of such existence by Appellants down to 1894. With nothing but the single fact of Appellants "conceded knowledge" of the Act of Confirmation, how

else, unless it was jumped at, could so remarkable a conclusion be reached. Nowhere in the entire record is there another statement to support it. To the contrary there is the most abundant denial of it. Appellees declare what Appellants admit, that the Town of Las Vegas as a legal or corporate entity never did exist under our sovereignty and likewise no representative of it, upon whom legal process could be served until the appointment of Trustees in 1902. Yet notwithstanding the record is undisputed that the status of the Town of Las Vegas was such in 1894 that it was impossible to *know* it as either claimant or owner, the Court contradicts it and finds to the contrary. As to service upon the Town of Las Vegas in 1894 Appellees declare that it could not be made by *legal process*. The Court again contradicts the record and says it could be made by publication as a defendant "so situated that process could not otherwise be served upon it." The Court's denouncement of the evils of "published summons," which its reasoning would lead us to suppose it intended to avoid, is appropriate here. (Trans. p. 19) Contra Hahn vs. Kelly 34 Cal. 391. (410). Our statute authorizing the quieting of title to real property makes no provision for service on the dead. As to them it says "The unknown heirs of any deceased person whom plaintiff alleges in his bill of complaint in his lifetime made claim adverse to the estate of plaintiff."

The truth is that the Town of Las Vegas is a mere name, a shadow without substance, the ghost of a departed Mexican authority. It has stalked into Courts, Departments of the Government, everywhere in fact where rights of the inhabitants to all or a portion of the lands of the Grant were involved, always and everywhere to confuse, complicate, defeat rights, never to establish them. In the Department of the Interior this ghost was laid by the Secretary in this language: "That the people composing the Town were understood to be the confirmees is shown by various annual reports to your predecessors, where, in giving a list of private land claims, under the heading "Confirmee" or "Present Claimants" the Phrase "Inhabitants of the Town" is used (Trans. p. 52.). Likewise in this Court in the case of Maese vs Herman (183 U. S. 572.) where it is said; "In the reports of the General Land Office subsequently made, the tract was named "Town of Las Vegas" and the claimants the "Inhabitants of the Town." Also, "The Town and its inhabitants were certainly substantial entities in fact, and were recognized by Congress as having rights, and directed such rights to be authenticated by a patent of the United States."

These views but follow the history of the Grant which Appellees have given. Inhabitants of the Town petitioned for an investigation of the title to the Grant and asked its confirmation

to themselves as claimants and legal owners. Inhabitants of the Town petitioned for a review and reversal of the rulings of the Secretary of the Interior, ordering a resurvey of the Grant Inhabitants of the Town opposed before the Commissioner of the General Land Office and in the District and Supreme Courts of the District of Columbia the issuing of a patent to some thirty individuals claiming to be the true Grantees. Indeed all along down to the appointment of Appellees as Trustees the people of the Town were active in defense of their rights and found no difficulty in asserting them. The "Town of Las Vegas," which the Supreme Court of New Mexico calls the "true owner," from whom Appellants "wrested the title," did nothing. If a claimant, when and where in all the history of the Grant did it ever assert a claim or prosecute one. Because of its admitted status it was powerless to do either. It was of no more importance as a defendant in the suit to quiet title than the inmate of a graveyard, who also might have been summoned by the same method. Insert its name in a proceeding and serve it as the Court directs and what is gained? Leave it out and what is lost? If it might be inquired into now, is there any merit in the Court's claim?

The Town of Las Vegas, had it then existed, would have been simply a Trustee as Appellees are now, a representive of the people of the Town, convenient to have, but not necessary. The Inhabitants were the persons materially interested and could best represent their interest and if they were before the Court in 1892, in the suit to quite title, the decree therein rendered bound them. The Court trying that case is to be presumed to have had full knowledge of everyting affecting the Grant, and having determined that all defendants, known and unknown, had been brought before the Court by "proper process" and that "Service upon each and all is in all respects and particulars in conformity to the law," such determination is conclusive in this collateral proceeding.

INHABITANTS AND TRUSTEES PRIVIES.

The inhabitants of the Town of Las Vegas and Appellees are privies in estate and are bound by the decree quieting title.

Greenleaf on Evidence Vol. 1 Sections 189, 536, 523.
Bigelow on Estoppel p. 88, 95.

Originally it was necessary to make the beneficiaries parties to all proceedings affecting their interest, and this rule still prevails where there is any doubt of the power of the Trustees to represent the beneficiary and bind him both in what is done

for him and what is done against him. The beneficiaries are the persons materially interested and can best represent their interest. Therefore, they ought to be parties in all cases unless there is a Trustee fully empowered to represent them, when the Court, in its discretion, may proceed without them.

Freeman on Judgments, Secs. 162. 157. 173.
Board of S. vs. Mineral Point R. R. Co., 24 Wis. 93. (126-128).
Shaw vs. R. R. Co., 5 Gray (Mass.), 170.
Willink vs. The Morris Canal & Banking Co., 4 N. J. Equity 397.
Van Vechten vs. Sebring, 2 John. Chan. (N. Y.) 197.
Vitterlein vs. Barnes, 124 U. S. 169.
Kerrison, Assignee, vs. Stewart, 93 U. S. 155.

It follows, we think, from the relation which the Trustee sustains to the beneficiary, that of a mere representative of him, that the non-appointment of the Trustee can not operate to suspend either the institution or prosecution of legal proceedings against the trust estate, or to discharge either the trust estate or the beneficiaries from the effect of the judgment rendered, when the latter have been made parties and served with legal process.

STATUTE OF LIMITATIONS.

The Statute of Limitations applies between *Cestuis que Trust* and third persons, the same as between Trustees and third persons.
Daniel's Chancery Pleading & Practice (5th Ed.) 644.
Angell on Limitations, Sec. 473.

The contention of Appellees, that the Statute did not begin to run until there was a representative chosen to prosecute and defend suits against the Grant, is not sustained by reason or authority. Unless persons are under the disabilities expressly mentioned in the statute, they cannot be exempted from its operation by judicial construction.

Angell on Limitations, Chap. 36, p. 475.
Tyler on Ejectment & Adverse Enjoyment, p. 928.

"It is now a settled doctrine, which has been repeatedly announced and applied by the Supreme Court of the United States, that however strong the reasons may be, the Courts cannot ingraft on a Statute of Limitations an exception not made in it; nor declare a right not to be barred, if within the fair

meaning of the language of the Act of Limitations, because it seems that the Legislature would have excepted it, if it had been anticipated and considered."

The Sam Slick, Fed. Case 12,282.
Clementson vs Williams 12 U. S. 25.
Bank of State of Alabama, vs Dalton, 50 U. S. 522.
Mc Iver vs Ragan, 15 U. S. 25.

Our Statute of Limitations in force at the time the suit of Appellants to quiet title was brought, is as follows:

"Art. 2938. No person or persons, nor their children or heirs shall have, sue or maintain any action or suit, either in law or equity, for any lands, tenements or hereditaments but within ten years next after his, her or their right to commence, have or maintain such suit shall have come, fallen or accrued, and that all suits, either in law or equity, for the recovery of any lands, tenements or hereditaments shall be had and sued within ten years next after the title or cause of action or suits accrued or fallen, and at no time after the ten years have passed: Provided, That if any person or persons that is or shall be entitled to commence and prosecute such suit or action in law or equity be or shall be, at the time of said right or title first accrued, come or fallen within the age of twenty-one years, *feme covert*, *non compos mentis*, imprisoned or beyond the limits of the United States and the Territories thereof, that then such person or persons, his, her or their children, heirs or assigns, shall and may, notwithstanding the said ten years be expired, bring his or her suit or action, as he, she or they might have done before the passage of this act, so as such person or persons, his, her or their children, heirs or assigns, shall within three years next after his, her or their full age, discoverture, coming of sound mind, enlargement out of prison, coming to the United States or the territories thereof, or death take benefit of and commence such suit, at no time after the said three years: Provided, also, that in the construction of this saving exception, no cumulative disability shall prevent this bar, but shall only apply to that or those disabilities which existed at the time when the right to sue first accrued, and to no other. Provided, further, that such action so commenced shall be an action prosecuted with effect, and no other."

DATE AT WHICH STATUTE BEGAN TO RUN.

According to the common Law doctrine, the fee of an estate can never be in abeyance. It must at all times rest in some one *in esse*.

Mayo vs Wood, 50 Cal. 171.

When the title to the Grant left the Government it passed directly to its beneficiaries, and we maintain that the Act of Congress of June 21, 1860, operated *Proprio vigore* to pass such title. The language of the Act is, "Be and the same is hereby confirmed." This language in the confirming Act, is held to operate as a complete divestiture of the title of the United States from the date of its enactment. See Tameling vs. U. S. Freehold, etc., Co., 93 U. S. 644. Where this language of the Act of June 21, 1860, is so construed. Also,

Deseret Salt Co. vs. Tarpey, 142 U. S. 241 (247).
Schulenberg vs. Harriman, 21 Wall. 44. (60).
Leavenworth, etc., R. R. Co., vs. U. S. 92 U. S. 733. (741)
U. S. vs. Montana Lumber Co., 196 U. S. 573. (577).
Glasgow et al. vs. Hortiz et al. 1 Black (U. S.) 599. (601)
Grignon's Lessee, vs. Astor, 2 How. 319. (344).

The title passes by the words of Grant contained in the Act of Congress, and not by the patent subsequently issued thereon. When the legal title to the land is granted by Act of Congress, the title of the Government is as effectively divested as it would be by the issuance of a patent therefor by the Executive Department, under authority of law, and such land then becomes subject to the Limitation Laws of the State in which it is situated, and an adverse possession thereof after the date of such Grant for the requisite period fixed by such laws, will ripen into a legal title in favor of the adverse possessor, and the effect of such possession is not interrupted or defeated by the subsequent issuance of a patent therefor in pursuance of such Act of Congress.

Jatunn vs. Smith et al., 30 Pac. 200. Langdeau vs. Hanes, 21 Wall 521. Longlois vs. Crawford, 59 Mo. 456. Peting vs. DeLove, 71, Mo. 1., Ryan vs. Carter, 93 U. S. 78., Joplin vs. Chachere, 192 U. S. 94, Toltec Ranch Co,. vs. Cork, 191 U. S. 532. Montgomery vs. Bevens, Fed. Case 9,735. (p. 640), So. Pac. R. Co. vs. Whitaker, 41 Pac. 1083.

And a contest in the United States Land Department as to the property will not stop the running of the Statute of Limitations of the State. Southern Pac. R. Co. vs. Whitaker 41 Pac. 1083 (1085).

EXCEPTIONS.

The exceptions to this uniform rule of construction of Acts of Confirmation of Congress are thus stated in the decisions of this Court from which we quote.

"A Legislative Confirmation of a claim to land is a recogni-

tion of the validity of such claim, and operates as effectually as a Grant or quit-claim from the Government. If the claim be to land with defined boundaries or capable of identification, the Legislative confirmation perfects the title to the particular tract and a subsequent patent is only documentary evidence of that title. If the claim be to quantity and not to a specific tract capable of identification, a segregation by survey will be required and the confirmation will then immediately attach the title to the land segregated."

Langdeau vs. Hanes, 21 Wall 521 (530), Morrow vs. Whitney, 95 U. S. 551 (554), Guitard et al. vs. Stoddard, 16 How, 494 (512).

"The Law is settled that where there is a specific tract of land confirmed according to ascertained boundaries, the confirmee takes a title on which he may sue in ejectment. But where the claim has no certain limits, and the judgment of confirmation carries along with it the condition that the land shall be surveyed and severed from the public domain and the land of others, then it is not open to controversy, that the title attaches to no land; nor has a Court of Justice any authority in Law to ascertain and establish its boundaries, this being reserved to the Executive Department." Stanford vs. Taylor, 18 How. 409 (412), West vs. Cochran, 17 How. 402 (515).

"Whatever interests the United States possessed in the lands was covered by those terms" (Refering to the language, There be and is hereby granted). "Unless they were qualified by subsequent provisions."

Deseret Salt Co. vs. Tarpey, 142 U. S. 241. (248). Whitney vs. Morrow, 112 U. S. 693.

"Generally speaking, while the legal title remains in the United States, the Grant is in process of administration and the land is subject to the jurisdiction of the Land Department of the Government. Sometimes a certification of a list of lands to the Grantee is declared to be operative to transfer such title; but whenever the granting Act specifically provides for the issue of a patent, then the rule is that the legal title remains in the Government until the issue of the patent, and while so remaining the Grant is in process of administration, and the jurisdiction of the Land Department is not lost."

Mich. Land & Lumber Co. vs. Rust, 168 U. S. 589 (592).

None of these exceptions apply to the case of the Las Vegas Grant, which was a specific tract capable of identification. Likewise no condition that the Grant shall be surveyed is coupled with this judgment of confirmation, nor are there any reservations or subsequent clauses restricting or qualifying its terms or making specific provisions for the issuance of a patent.

If however, a survey might be deemed to have been necessary, the "Pelham Survey" fulfills such requirements. The Baca Claimants were to have an area equal to that of the Town to be selected in five separate bodies. Hence knowledge of the exact area confirmed to the Town was necessary before the Surveyor General could provide them with the requisite certificate of their right and the area they were to select. The Pelham Survey of 1861 furnished this and its approval by "The proper officers of the Government" (Trans. p. 10) was also an approval of the area of the Las Vegas Grant as well as its boundaries, as determined by that survey. As was held by this Court in Shaw vs. Kellogg. 170 U. S. 312, this action taken by the Land Department was a finality as to the Baca Heirs. If so, it was a finality as to the area of the Las Vegas Grant for the one could no more be changed than the other.

At the latest then, the Land Department lost jurisdiction of the Las Vegas Grant June 21, 1863, when all the Baca floats were either located or barred of location, and the title of the Government then vested in the inhabitants of the Town, so that the Statute of Limitations of the Territory began to run.

The fact that in 1889 and 1900 the Commissioner of the General Land Office of the United States caused a re-survey of the Grant to be made by which its area was reduced from 496,446.96 acres to 431,653.65 acres, upon which patent issued, signifies nothing, since such re-survey was made and accepted without contest.

In conclusion we call the Court's attention to another view of the Act of the Legislative Assembly of New Mexico of March 12, 1903. (Finding of Fact 9. Trans. p. 107). It will be noted that in addition to ratifying the appointment of Trustees by the District Court, it likewise declares the policy of the Territory as to the Administration of the Grant, and in keeping with the purpose of the Mexican Government recognizes the occupation and settlement of the lands as the chief object to be accomplished, by avowing its intention not to interfere with or prejudice vested rights and enjoining upon the Trustees the express duty of giving "deeds of conveyance to any and all persons who hold a title to any such lands, which became or was perfect or entitled them to the possession thereof at the time of the acquisition of New Mexico, or at any time subsequent thereto."

No narrow or technical policy in dealing with settlers is here authorized. That rights of property could originate and become perfect and, if not, at least of such a character as would entitle the settler to the possession of his land, in the interim

between the confirmation of the Grant and the appointment of Trustees, is conceded, and all such titles, including the bare right to possession, the Trustees are commanded to approve and make valid by the execution and delivery of a deed.

If Appellees, as Trustees of the Grant, were required to give deeds of conveyance to parties merely entitled to possession, without "Judicial determination or adjustment" as this language of the Act imports, they certainly could have no grounds for refusal to do so in a case where such possession had been adjudicated to have been for the statutory period, as here.

We submit therefore from the foregoing considerat ons that this case should be reversed and remanded with instructions to award a writ of mandamus in accordance with the petition of Appellants.

Respectfully submitted,
JOHN D. W. VEEDER,
Counsel for Appellants.

APPELLANTS' REPLY BRIEF.

Appellees entire argument assumes that the decree of 1894 is open to attack here. They ignore the fact that this is a collateral proceeding and the decree therefore conclusive as to them.

Appellants stand upon the decree of 1894 and maintain that not only possession for the statutory period, but every other fact necessary to support that decree was adjudicated in that case and such adjudication is binding here.

Appellees would have us believe there are three issues here. 1st. that of the sufficiency of the service upon the Town of Las Vegas in the suit to quiet title. 2nd. That of the running of the Statute of Limitations. 3rd. That of the non-suability of the Town, until furnished with officers, because of its being a Trustee of a public and political trust.

The first we have shown in our brief page 10 is positively excluded by the language of paragraph 22, and the Supreme Court of New Mexico, in considering it, both disregarded the pleadings in the case and contradicted admitted facts.

The third is nowhere hinted at in the pleadings. It is purely a creature of Appellees imagination.

The second, as we have shown in our brief page 9 is the only issue made by the pleadings in the case. The answer from paragraph 4 to 23 avers the facts in support of this issue while paragraph 23 merely states the consequence resulting

from the preceding averments as to the condition of both title and Town. We have read paragraphs 22 and 23 (Trans. p. 13.) separately and together and interpreted them so as to make them consistent with each other, and find they have reference to the same issue. Say what Appellees may upon this point, they are confronted with this dilemma; either their pleadings (answer and counter-claim Trans. p. 9 53) contain averments consistent with each other and raise but one issue, or averments inconsistent with each other and raise two, inconsistent isssues. By insisting, as they are now doing, that the Town of Las Vegas could have been served with legal process in 1894, in the face of their sworn declaration that it could not have been so served, Appellees are blowing hot and cold in the same breath.

Appellees make frequent references to the Town of Las Vegas as a "known owner and claimant" of the Grant, but nowhere attempt to show how it could have been so. They ask us to take the bare assertion as proof of the fact. Under Sec. 4011, known claimants are any and all persons, living at the time suit is brought and known, as one seen and conversed with, whom plaintiff is informed and believes claims adverse to him. Applied to artificial persons, it would read any and all legal entities in existence at the time suit is brought and known as one knows a corporation through its office and the transaction of business, which plaintiff is informed and believes claim adverse to him In addition it must be such a legal entity as can be served with legal process in some one of the various ways provided by law. If this be a correct definition of a known claimant in the sense in which the words are used in our Statute Finding of Fact 3. Trans. p. 100.) could any one in 1894 have made an affidavit that the Town of Las Vegas was then a known claimant adverse to plaintiff, conceding that the status of the Town at the time was such as appellees swear it was in finding of fact. 5. (Trans. p. 103).? We think not.

We should add, that the Supreme Court of New Mexico was in error, in finding that the Town of Las Vegas could have been served in 1894 as a defendant "so situated that process could not otherwise be served upon it." The Statute (Finding of Fact 4. Trans. p. 103.) providing for such service contemplates its use against living defendants only.

If there were any important facts to be found by the lower Court, other than were found, Appelleees were before that Court and could have obtained them. As to what Appellees call the essential fact, viz; knowledge by Appellants in 1894 that the Town was a known claimant, there was no testimony in the record below that strengthened the admitted averments on that subject, and the Supreme Court in its opinion states all the facts upon which that finding was based.

Our Statute on the subject of quieting title to real property (Finding of Fact 3. Trans. p. 100) has never been construed by our Supreme Court, as Appellees say. This is the first case in which, so far as we know, it was ever before that Court and coming up in a collateral proceeding was not open to construction, had it been in issue. The case of Rodriguez vs. La Cueva Ranch Co., was a partition proceeding under an entirely different statute and therefore far from being a construction of the Statute we are considering.

Appellants in their brief have asked Appellees, what would have been gained by adopting their mode of service in preference to the one employed. With this inquiry before them, they answer as follows: "The sole question for determination here is as to whether or not the Town was a party, not as to whether the inclusion of its name among the defendants would have resulted in an appearance on its behalf."

To remove all doubt as to the intention of Appellants to quiet title against the Grant and the Court's knowledge of such intention, we refer to Appellants complaint. (Finding of Fact 2. Trans p. 97.)

Appellees in the concluding paragraph of their brief seem skeptical about the position they have taken and discussed. They say, "If it could have been sued at all, service could have probably been made by publication under Sec. 2694 C. L. 1897, which was then in force." If, on the contrary, it could not have been sued, it follows, that there was no one but the inhabitants of the Town to be brought before the Court, and the method Appellants employed was the only one.

Respectfully submitted,
JOHN D. W. VEEDER,
Counsel for Appellants.

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1923

No. 218

GEORGE E. PRIEST, MELVIN W. QUICK AND CHARLES M. BENJAMIN,
Appellants.

vs.

THE BOARD OF TRUSTEES OF THE TOWN OF LAS VEGAS, IN THE COUNTY OF SAN MIGUEL, NEW MEXICO,
Appellee.

Appeal from the Supreme Court of New Mexico

BRIEF OF APPELLEE

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SUBJECT INDEX.

PAGE

General Statement 3

Statement of Facts as to Proceeding of 1894..... 6

There is no proper Statement of Facts by the Court below, and nothing for Review in this case.....

Claim of Town of Las Vegas known to Appellants, Town a Known Claimant.....10

Designation of Town of Las Vegas as Unknown Claimants in Suit of 1894 did not make the Town a Party 12

TABLE OF CASES.

PAGE

Albright vs. Sandoval, 216 U. S. 331 15
American Land Co. vs. Zeiss, 219 U. S. 47 16
Armijo vs. Armijo, 181 U. S. 561 10
Balse vs. Kaulter, 75 N. W. 566 17
Bardwell vs. Collins, 44 Minn. 97; 9 L. R. A. 152 ... 17
Bear Lake Co. vs. Budge, 9 Idaho 703; 75 Pac. 614 .. 17
Board of Commissioners vs. Coler, 215 U. S. 296 ... 15
Bomifield vs. Price, 154 U. S. 672 10
Bunker vs. Taylor, 13 S. D. 433; 83 N. W. 555 17
Cohn vs. Daley, 174 U. S. 539 10
Crary vs. Dye, 208 U. S. 515 15
Eayers vs. Nason, et al., 74 N. W. 408 17
English vs. Arizona, 214 U. S. 359 15
Floto vs. Floto, 213 Ill. 436; 72 N. E. 1902 17
Galbreath vs. Teufel, 107 N. W. 48 16
Gray vs. Howe, 108 U. S. 12 10
Hill vs. Henry, 66 N. J. Eq. 150 17
Lewis vs. Herrera, 208 U. S. 309 15
Maese vs. Herman, 183 U. S. 572 3
Marshall vs. Burtis, 172 U. S. 630 10
Oziah vs. Howard, 128 N. W. 364 17
Rodriguez vs. La Cueva Ranch Co., 134 Pac. 228 ..
..... 13, 14, 17
Shepard vs. Ware, 46 Minn. 174 17
Title, Etc., Co. vs. Kerrigan, 150 Cal. 289 15
Topliff vs. Richardson, 76 Neb. 114; 107 N. W. 114. 17
Town vs. First National Bank, 93 N. Y. 8 17
Ware vs. Easton, 46 Minn. 180 10
W. A. Wood Co. vs. Dobry, 59 Neb. 590; 81 N. W.
611 17

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Appellee.

No. 218

STATEMENT

This case involves the title to a tract of land lying near the Town of Las Vegas, New Mexico, and within the boundaries of the Las Vegas Grant. Appellee claims title as the representative of the Town of Las Vegas, the owner of the grant by virtue of the Act of Congress of June 21, 1860, confirming it (transcript p. 10), and the patent of the United States issued to the town in conformity with that confirmation (transcript p. 12). A history of the grant will be found in the opinion of this court in *Maese* v. *Herman,* 183 U. S. 572, as well as in the exhibits attached to the answer of appellee in this case. (Transcript p. 9).

Appellants claim title to the tract in question by virtue of a decree of the District Court of San Miguel County, New Mexico, rendered September 15, 1894, which in terms quieted title in appellants, plaintiffs in that proceeding, as against the defendants therein, on the ground of adverse possession. There is in the record no proof of adverse possession, nor of title in appellants, other than this decree. Appellants' entire claim is based upon this decree, and the present proceeding was instituted solely to compel appellee to recognize it as binding and to execute to appellants a deed for the land covered by the decree. Obviously, therefore, the only question for discussion before this court is whether or not the decree of 1894 is binding upon appellee. If binding, then it may be conceded that appellants are entitled to their relief. If not binding, they are entitled to nothing for they do not claim title from any other source. Both the District Court of San Miguel County and the Supreme Court of New Mexico held the decree not binding upon appellee, and denied appellants the relief demanded.

The answer filed by appellee in the District Court (transcript p. 9) sets out a complete history of the Las Vegas Grant. The Mexican proceedings, the confirmation by Congress, the various surveys, the conflicting decisions upon its extent made by various officials of the Interior Department, the litigation over the question of the name in which the patent should issue, and the final patent, are all shown. Based upon these proceedings and upon certain other proofs not disclosed by the present record, it was the contention of appellee in the lower courts that the decree of 1894 was not effective to bind the Town of Las Vegas, first, because it was not a party to the suit in which that decree was rendered, not being a party by name and not being included in the class of

defendants designated as "unknown claimants of interests," inasmuch as it was a known, not an unknown, claimant; and, secondly, because the Town of Las Vegas was not bound by that decree, even if properly made a party, since title did not finally pass from the United States until the patent of 1903, or at least until the approval of the final survey of 1900; and, thirdly, because of the peculiar nature of the title of the town, holding as trustee of a trust, of a public and political nature, it was not suable until such time as it was furnished with officers by whom that trust could be carried out, and authorized to sue and be sued, which happened for the first time in 1902 when its first trustees were appointed. The Supreme Court of New Mexico decided the case upon the first of the grounds above stated, namely, that the Town of Las Vegas was not a party to the suit of 1894. We shall therefore not discuss the other grounds.

We also decline to enter into any discussion of whether or not title to land on the Las Vegas Grant can be acquired as against the Town of Las Vegas by adverse possession, or as to the date when the statute of limitations based upon such possession commences to run. These questions are argued in appellants' brief commencing on page 13, but have no place in this case. Outside of the finding contained in the decree of 1894 there is no evidence of any adverse possession by appellants, so that if the decree is not binding the question of possession is eliminated. If the decree is binding, then it is immaterial whether it was based upon proof of adverse possession or of title acquired in some other way.

The statement of facts by the lower court, hereafter referred to, is wholly silent on the subject of adverse possession by appellants.

Our discussion will be confined entirely to the ques-

tion of whether or not the Town of Las Vegas was a party to the decree of 1894.

Statement of facts as to proceeding of 1894.

The bill of complaint and other pleadings on which the decree of 1894 was based appear in the transcript commencing at page 58. The plaintiffs in that case were the same persons appearing as appellants here. The Town of Las Vegas does not appear as a defendant by name. A number of persons are named as defendants, but we are concerned with none of them since there is no privity between any one of them and the Town of Las Vegas. In addition to the named defendants, there is the designation of a class of persons as defendants under the style of "all the unknown claimants of interests in the premises and lands hereinafter described adverse to your orators," and it is this designation which is claimed to embrace the Town of Las Vegas and make the town a party defendant in that suit.

The allegation of the bill of complaint in regard to to the defendants so designated is as follows (transcript pp. 60, 99.):

"That your orators are credibly informed and believe that certain unknown persons, designated in this bill as 'Unknown Claimants of interest in the premises adverse to your orators' also make some claim of interest and title in and to the said tract of land adverse to the estate of your orators, but what the nature and extent of the said claim of said unknown persons in and to the said tract of land is likewise to your orators unknown."

Service upon the defendants designated as "unknown claimants" was made by publication. The affidavit on

which the publication was based was made by John D. W. Veeder as attorney for complainants, and so far as applicable here was as follows (transcript pp. 62, 101.):

"and that the place of residence is unknown and the whereabouts cannot be discovered of any and all of the defendants designated as Unknown Claimants of Interests in the Premises and Lands described in the Bill of Complaint, who claim adversely to the complainants, George E. Priest, Melvin W. Quick and Charles M. Benjamin."

No service of any kind was made or attempted upon the Town of Las Vegas or any representative or inhabitant of the town, unless, as is now claimed by appellants, the publication above mentioned was effective process against it.

The statute allowing the designation of defendants as "unknown claimants of interests" is in part as follows (transcript p. 100):

Any or all persons whom the plaintiff alleges in his bill of complaint, he is informed and believes make claim adverse to the estate of the plaintiff, the unknown heirs of any deceased person whom plaintiff alleges in his bill of complaint in his life time made claim adverse to the estate of plaintiff, and all unknown persons who may claim any interest or title adverse to plaintiff, may be made parties defendants to said bill of complaint by their names, as near as the same can be ascertained, such unknown heirs by the style of unknown heirs of such deceased person, and said unknown persons who may claim any interest or title adverse to plaintiff by the name and style of unknown claimants of interests in the premises adverse to plaintiff, and the service of process on, and notice of said suit against defendants, shall be made in the same manner as now provided by law in other civil suits."

There is no proper statement of facts by the court below, and therefore nothing for review in this case.

A complete discussion of the issues in the present case is somewhat hampered by the lack of a proper statement of facts from the Supreme Court of New Mexico. This appeal is governed by the act of April 7, 1874, 4 Fed Stat. Ann. 460, providing that on appeal from a Territorial Court "a statement of the facts of the case in the nature of a special verdict" shall be made and certified by the court below. There is a so-called "Findings of Facts" in the record, commencing on page 96, but an inspection of it shows that it is merely a recital of certain admitted allegations of the pleadings, conclusions of law, and copies of the pleadings themselves. On page 88 of the transcript appears an order of Judge McFie settling a bill of exceptions and which was originally appended to the bill of exceptions made a part of the record in the court below and containing all the evidence and exhibits used in the District Court. That bill of exceptions is, of course, not before this court, nor is there any statement of facts by the Supreme Court to take its place. Taking up these findings one by one the following appears:

Finding No. 1 is, except for the acreage, paragraph No. 4, in plaintiff's complaint, (transcript p. 10) not denied by respondents.

Finding No. 2 is contained in paragraph No. 1 in respondent's counterclaim (transcript p. 53), admitted by plaintiffs (transcript p. 75).

Finding No. 3 is a statement of law, not fact.

Findings No. 4 and 5 are covered by paragraph 1

of respondent's counterclaim (transcript pp. 53, 62) admitted by plaintiff (transcript p. 75).

Finding No. 6 is alleged in plaintiffs' complaint (transcript p. 4) as well as in respondent's counterclaim (transcript p. 53).

Finding No. 7, if it be a finding of fact, is of no importance to the issues of this case, and appears by inference from the pleadings.

Finding No. 8 is substantially covered by paragraph 22 of respondent's answer (transcript p. 13), and paragraph 22 of the counterclaim (transcript p. 57), both admitted by plaintiff.

Finding No. 9 is a statement of law.

Finding No. 10 is alleged in plaintiffs' complaint (transcript p. 3) and admitted by respondent through failure to deny.

Findings No. 11 and 12 are only statements of the record in the case.

It will thus be seen that there is not a single finding bearing upon the issues here that is based upon the evidence heard by the District Court in this case and brought before the Supreme Court of the Territory by bill of exceptions, or that can be said to constitute a "statement of facts of the case in the nature of a special verdict." Except so far as they may be gleaned from the pleadings and from the opinion of the court, this court is wholly ignorant of the facts upon which the opinion of the lower courts was based.

Under these circumstances there is nothing for this court to examine, and the judgment should be affirmed.

Gray v. *Howe*, 108 U. S. 12.
Bonnifield v. *Price*, 154 U. S. 672.
Marshall v. *Burtis*, 172 U. S. 630.
Cohn v. *Daley*, 174 U. S. 539.
Armijo v. *Armijo*, 181 U. S. 561.

The claim of the Town of Las Vegas was known to appellants, and the town was a known claimant.

If, under the authorities above cited, this court will review the judgment of the Supreme Court of New Mexico at all, it will do so with the presumption of the existence of whatever facts were necessary to support that judgment. There is but one such essential fact, namely, that at the time of the commencement of the suit to quiet title in 1894, and of the decree here relied upon, plaintiffs in the case, appellants here, knew that the town of Las Vegas was a claimant of the title to the land in controversy, so that the town was in fact a known, not an unknown, claimant. Inasmuch as the judgment of the lower court is based upon that fact, and since the evidence is not before this court, it must be presumed here that the proof on this subject sustained the judgment. It is therefore out of place for appellants to attempt to argue lack of knowledge of this fact, or insufficiency of proof on the subject, as is done on pages 10 to 12 of their brief. The question is not an open one. If, however, this court desires to search the record for proof of the matter, sufficient may be found, even in the absence of the evidence or of any findings, to justify the judgment.

The bill of complaint in the suit to quiet title alleges

that the grant of which the land in controversy is a part "was on June 21, 1860, duly confirmed by Act of Congress of the United States to the Town of Las Vegas," this being a statement by appellants themselves that they knew of the claim of the town. (Transcript p. 59).

The Supreme Court of New Mexico in its opinion definitely states the knowledge of appellants in the following language (transcript p. 119):

"But in 1894, were the owners of the Las Vegas Grant, whom defendant now represents, unknown owners? The complainants certainly knew the exact status of the matter for their complaint, as we have seen, in terms alleged that the premises were a part of the Las Vegas grant 'on June 21, 1860 duly confirmed by Act of Congress of the United States to the Town of Las Vegas.'

The complainants thus knew that the Town of Las Vegas was the confirmee of the grant and that if complainants' title had, by adverse possession, been wrested from any one it was from such confirmee."

It is therefore established in this case that appellants knew of the claim of the Town of Las Vegas at the time of the bringing of the suit to quiet title. The fact that there may have been some uncertainty as to just what the town consisted of, or as to the meaning of the term Town of Las Vegas, or as to the individual beneficiaries, is immaterial. The discussion on page 11 of appellant's brief of the character of the Town of Las Vegas, its status, and of the probable effect of naming it as a defendant is also out of place.

The sole question for determination here is as to whether or not the town was a party, not as to whether the inclusion of its name among the defendants would have resulted in an appearance on its behalf.

The Town of Las Vegas was not made a party to the suit of 1894 by the designating as defendants of the "unknown claimants of interests adverse to complainants."

In the absence of the statute above quoted allowing the use of the designation "unknown claimants of interests," no such term could have been used, for the right to sue persons otherwise than by making them defendants under their proper names, or under some description adequate to identify them, is purely statutory. The question of who may be made parties under such a designation is answered by the statute itself. It provides that "all unknown persons" may be designated and proceeded against as such. It does not purport to allow such a designation for any "known" persons, but expressly provides that such persons must be made defendants "by their names, as near as the same can be ascertained." The express language of the statute requires the naming of known claimants, and it is difficult to understand how any other construction can be given to it. The Supreme Court of New Mexico in passing upon it says (transcript p. 119):

"Statutes providing for constructive service are subject to grave abuse. They are of course necessary, since without them titles could never be quieted or proceedings in rem maintained against non-resident or truly unknown parties. But it is a matter of judicial knowledge that a published summons in the vast majority of cases fails to reach those to whom addressed and that property is taken with but a theoretical opportunity for the hearing which is an essential of due process of law. Considerations such as these last named lead the courts to insist upon a strict construction of such statutes and

to hold that where the real owner may be brought into court by name his property may not be taken by an advertisement against unknown owners. Whereas, as in this case, the locus of the title is definitely declared of record and such is confessedly known to the complainant, it is but an exaction of good faith that the holder of such title should be summoned by name in order that it may appear and defend. To exact less is to open the doors wide to insidious attacks upon property rights, and indeed to ignore the statute which in terms provides (C. L. Sec. 4011) that persons claiming interests 'may be made parties defendant by their names, as near as the same can be ascertained.' "

Since the decision of this case by the Supreme Court of the Territory, the same question has been decided in the same way by the Supreme Court of the State of New Mexico in *Rodriguez* v. *La Cueva Ranch Co.*, 134 Pac. 228. The latter case involved the interpretation of Sec. 3181 of the compiled laws of New Mexico, governing the designation of unknown parties in partition proceedings, which reads as follows:

"Sec. 3181. All persons interested in the premises of which partition is sought to be made, whose names are unknown, may be made parties to such partition by the name and description of unknown owners or proprietors of the premises, or as unknown heirs of any person who may have been interested in the same."

In that case it appears that certain persons who were in the actual possession of parts of the premises sought to be partitioned had not been made parties to the action by name, and the question was as to whether they were parties under the designation of "unknown owners." In the present case, when before the Supreme Court of the Territory, it was found that plantiffs had actual knowl-

edge of the claim of respondent. In *Rodriguez* v. *La Cueva Ranch Co.*, the knowledge of plaintiffs was presumed from the possession of the defendants which is held equivalent to actual notice. The principle underlying the two cases is the same. The Supreme Court of the State follows the rule laid down by the Supreme Court of the Territory, saying:

"It is apparent from a reading of the foregoing sections, it seems to us, that it was not the intention of the Legislature to provide for the making of parties by the name of unknown owners, and for the service of process upon them by publication, when they in fact were in the open and notorious adverse possession of a part of the premises. The test seems to be pointed out in section 3180, that there must be some impediment so that the parties cannot be named before resort may be had to a procedure so well known to be ineffective to bring home notice to interested parties. In the partition proceeding, the plaintiffs and defendants named were claiming to be the owners of the property and to have title to the same. They had the means, as indeed we believe it was their duty, to ascertain the names of all persons actually holding adverse possession of any of the property claimed which was the subject-matter of the litigation. And so we conclude that it was not the intention of the Legislature to allow the rights of claimants to land, situated as the appellees and their predecessors in title were, to be foreclosed of their rights by a proceeding in which they are not named, and in which the only service obtained upon them was by publication."

Both the Territorial and State Courts have so construed these statutes as to prevent the inclusion of persons whose names are known under the designation of unknown claimants. These are local statutes, and it is elementary that the construction given them by a state court will be followed by this court. In the absence of

manifest error this court will also follow the decision of a Territorial Court in such matters.

Albright v. *Sandoval*, 216 U. S. 331.
Board of Commissioners v. *Coler*, 215 U. S. 296.
English v. *Arizona*, 214 U. S. 359.
Lewis v. *Herrera*,, 208 U. S. 309.
Crary v. *Dye*, 208 U. S. 515.

The construction given this statute by the lower court, should therefore be followed.

Discussions of the general question of the right to make parties defendants under the description of "unknown claimants" are found in the decisions construing the statute of California that provided for the perfection of title to real estate where the public records had been destroyed by the San Francisco earthquake. That statute provided that the defendants should be designated as "all persons claiming any interest in, or lien upon, the real property herein described, or any part thereof," and allowed service by publication, requiring also personal service upon named persons residing in the state. The Supreme Court of California in *Title & Document Restoration Co.* v. *Kerrigan*, 150 Cal. 289, construed this statute as requiring the plaintiff "to designate and to serve as known claimants all whom with reasonable diligence he could ascertain to be claimants," and thus construed holds the law constitutional. With reference to "unknown claimants" the court says:

"And in this connection it may be well to notice the contention of respondents, that, by the terms of the act now under consideration, the plaintiff in the proposed action may include among 'unknown claimants' those who, with reasonable diligence on his part, might have become known to him. It is no doubt true that so far

as substituted service upon a class of unknown claimants is permitted at all, in proceedings which are merely quasi in rem, it rests upon the ground of necessity, and that this necessity will not justify the omission of personal service upon all who could with reasonable diligence be ascertained and found. This principle is recognized even in the cases which sustain the power to bind 'unknown owners' by substituted service in actions of the character now under consideration."

The same statute is construed in the same way by this court in *American Land Co.* v. *Zeiss,* 219 U. S. 47.

In addition to the case of *Ware* v. *Easton,* 46 Minn. 180, relied upon and quoted from in the court below (transcript p. 119) numerous courts have laid down the general rule that artificial designations of defendants may be used only in case of necessity, and that persons whose names are in fact known, or could with reasonable diligence be ascertained, may not be included.

The case of *Galbreath* v. *Teufel,* 107 N. W. 48, was a suit to quiet title in which service was made by publication as to unknown claimants. In discussing the effect of the decree so obtained on persons whose names and addresses might have been ascertained the court said:

"It is plainly evident that if the agent did not in fact know the names and addresses of the heirs it was because he did not take the trouble to inquire. He knew where the information could be had, and it was easily accessible. * * * * * It is too plain for argument that the proceedings resulting in this judgment were a gross abuse of judicial process even if it be conceded that they were in form due process of law. * * * * To permit a judgment based on such procedure to stand would be a reproach on the administration of justice. * * * * * Whether any actual deceit was intended

or not the effect of the procedure followed was a *fraud on the court* as well as upon the defendants."

A similar case is *Floto* v. *Floto*, 213 Ill. 436, 72 N. E. 1902, a proceeding for the probate of a will in which service by publication was had on "unknown heirs." The court says:

"Here were heirs that were known and could not be placed in the designation of unknown heirs. Their whereabouts was known. They were entitled by statute to have notice of this probate. They did not have it and the court did not have jurisdiction to enter probate without it."

The following cases, several of which are cited by the Supreme Court of New Mexico in *Rodriguez* v. *La Cueva Ranch Company*, lay down the same general rule:

Bear Lake Co. v. *Budge*, 9 Idaho 703, 75 Pac. 614.
Hill v. *Henry*, 66 N. J. Eq. 150.
Town of Hancock v. *First National Bank*, 93 N. Y. 8.
Bardwell v. *Collins*, 44 Minn. 97, 9 L. R. A. 152.
Shepard v. *Ware*, 46 Minn. 174.
Eayers v. *Nason, et al.*, 74 N. W. 408.
Balse v. *Kaulter*, 75 N. W. 566.
W. A. Wood Co. v. *Dobry*, 59 Neb. 590, 81 N. W. 611.
Topliff v. *Richardson*, 107 N. W. 114, 76 Neb. 114.
Bunker v. *Taylor*, 13 S. D. 433, 83 N. W. 555.
Oziah v. *Howard*, 128 N. W. 364.

Assuming for the purpose of argument that the Town of Las Vegas could have been sued, it is apparent that it was not a party to the suit of 1894. It is not named, and being a known claimant is not embraced in the class of unknown claimants. If it could have been

sued at all, service could probably have been made by publication under section 2964 C. L. 1897 which was then in force, by making the affidavit required by that section that the defendant was so situated that process could not be otherwise served upon it, and naming the town in the complaint, affidavit and publication. But certainly the proceeding of 1894 was ineffectual to bind the town, which was not made a party, and it may be doubted if it was intended to affect it.

The only question before the Supreme Court of New Mexico was as to the effect of the degree of 1894, and this having been correctly decided the judgment of that court should be affairmed.

Respectfully submitted,

CHAS. A. SPIESS,

S. B. DAVIS, JR.,

Attorneys for Appellee.

PRIEST *v.* TRUSTEES OF THE TOWN OF LAS VEGAS, NEW MEXICO.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO.

No. 218. Submitted January 28, 1914.—Decided March 9, 1914.

A judgment in a suit to quiet title to real property in New Mexico is not binding on a person or corporation or trustees having an interest in the premises who could be definitely located and served with process and who were not joined by name. The court did not acquire jurisdiction over them.

The statutes of New Mexico which, in 1894, permitted unknown claimants to be joined as defendants as such and to be served by publication, did not relate to parties who could be definitely located and joined or who were confirmees of the grant including the property under the act of June 21, 1860.

In affirming a judgment, an appellate court is not confined to the grounds on which the court below based the judgment.

The full faith and credit clause and statutes enacted thereunder do not apply to judgments rendered by a court having no jurisdiction

of the parties or subject-matter or of the *res* in proceedings *in rem*. *Thompson* v. *Thompson*, 226 U. S. 551, distinguished.

A town in New Mexico and its inhabitants are substantial entities in fact, and in this case have been recognized by Congress as having rights to be authenticated by a patent. When a town is a patentee it represents not only individual, but collective, interests. *Maese* v. *Herman*, 183 U. S. 572.

Proceedings against some of the inhabitants of a town *held* in this case not to bind the other inhabitants individually, or collectively as a town, on the ground of privity.

16 New Mex. 692, affirmed.

THE facts, which involve the construction of statutes of New Mexico in regard to serving process in real estate action on unknown defendants and the effect of a judgment based on service by publication, are stated in the opinion.

Mr. John D. W. Veeder for appellants.

Mr. Charles A. Spiess and *Mr. S. B. Davis, Jr.*, for appellee.

MR. JUSTICE MCKENNA delivered the opinion of the court.

Action for mandamus brought by appellants in the District Court of the county of San Miguel, then in the Territory of New Mexico, against appellees as trustees of the town of Las Vegas to require them to execute a deed or deeds to the property described in the petition. The appellees filed an answer to the petition and also a counter-claim. Those papers set out the history of the Las Vegas grant, preceding and subsequent to its confirmation by the act of Congress hereinafter referred to and the final patent to the town. Motions to strike them out were overruled, and demurrers to them were also overruled. An answer having been filed to the counter-claim by appellants, portions of which were struck out by the court

on motion of appellees, after hearing judgment was rendered dismissing the petition. The judgment was affirmed by the Supreme Court of the Territory.

The petition alleges appellants to be the owners in fee simple and holders of a perfect title to the land described therein and that it lies within the boundaries of "The Las Vegas Land Grant." That they acquired the title thereto between October 4, 1888, and July 1, 1894, by purchase from the then owners and occupants of the several portions comprising the tract and obtained deeds of conveyance therefor and afterwards instituted proceedings in the District Court of San Miguel County against certain named persons "and all the unknown claimants of interests in the lands and premises" adverse to appellants, to quiet their title to the lands, and that on September 15, 1894, a decree was duly entered in the cause confirming and establishing in them an estate in fee simple, absolute, against any and all and every adverse claim of all persons whomsoever, and quieting and setting at rest the title to the land against appellees. A copy of the decree is attached to the petition.

The petition also alleges that the Las Vegas grant was confirmed by act of Congress on June 21, 1860, to the town of Las Vegas and became thereby segregated from the public domain and the property of the grantee and its privies.

That Jefferson Reynolds, Eugenio Romero, Charles Ilfeld, Elisha V. Long, Isidor V. Gallegos, Felix Esquibel and F. H. Pierce are the trustees of the town, duly appointed by the District Court of San Miguel County under and by virtue of an act of the Legislative Assembly of the Territory of New Mexico entitled "An Act to Provide for the Management of the Las Vegas Grant, and for other purposes," approved March 12, 1903, and that it was made the duty of the board of trustees to make, execute and deliver deeds of conveyance to all persons who held a

title to any lands of the grant, which became or was perfect or entitled them to the possession thereof at the time of the acquisition of New Mexico, under the treaty of Guadalupe Hidalgo, or at any time subsequent thereto.

That appellants made application to the board of trustees to execute and deliver a deed to them of the tract of land described, the title to which had become perfected by the decree hereinbefore specified, but the board declined to recognize the title of appellants and to issue the deed of conveyance asked for.

Mandamus, directed to the board, was prayed.

The ground of appellants' petition, therefore, is that they possess a perfect title established by the suit and decree referred to which entitled them to a deed from the trustees under the act of the Legislative Assembly of March 12, 1903. Laws of New Mexico, 1903, 72. That act becomes a factor for consideration. By it the District Court of San Miguel County is vested with jurisdiction to manage, control and administer the land grant. In the exercise of such jurisdiction power is conferred to appoint a board of trustees from among the residents upon the grant. Provision is made for their organization, and the court is empowered to exercise the same control over their acts as courts of equity exercise over receivers. And it is provided that "this act shall not interfere with or prejudice any vested rights in and to any of the lands embraced within the boundaries of said Las Vegas Grant, or preclude a judicial examination or adjustment thereof, and it is hereby made the duty of said board of trustees to make, execute and deliver deeds of conveyance to any and all persons who hold a title to any such lands, which became or was perfect or entitled them to the possession thereof at the time of the acquisition of New Mexico, under the treaty of Guadalupe Hidalgo, or at any other time subsequent thereto." (§ 7.)

By § 9 the board has power, under the direction of the

court, to lease, sell or mortgage any part or parts of the grants, the proceeds to be used "for such purposes as said board and court may deem to be for the best interests of the community for the benefit of which said grant was made."

It will be seen, therefore, that the statute makes it the duty of the trustees, it may be under the direction of the court, to execute and deliver deeds of conveyance to any one having the kind of title described, that is, which had become or was perfect or entitled such person to land which he claimed at the time of the acquisition of New Mexico, under the treaty of Guadalupe Hidalgo, or at any other time subsequent thereto. Appellants rely upon such title, as we have seen, as established by the suit to quiet title and the decree rendered therein. A consideration of this suit and decree, therefore, becomes necessary.

The suit was brought in the District Court of San Miguel County, Territory of New Mexico, by appellants against certain named defendants and "all the unknown claimants of interests in the premises and lands" which were described. The complaint alleged that appellants were owners in fee simple and the occupants and possessors of the land, that it lay within the exterior boundaries of a grant of land made by the Mexican Government to certain named parties in the year 1835 "for the use and benefit of the inhabitants and settlers of the Town of Las Vegas"; that the grant was known in the archives of the Surveyor General of New Mexico as private land claim number 20 and, as such, on June 21, 1860, duly confirmed by act of Congress of the United States to the Town of Las Vegas, and thereby became segregated from the public domain. That the land described in the complaint as belonging to appellants was taken possession of by them and their grantors under and by virtue of the terms and provisions of the said Las Vegas grant, and the laws of the Territory of New Mexico applicable thereto, more than

ten years prior to the commencement of the suit, and that they and their grantors from whom they claim title and from whom they have deeds of conveyance have been in the actual, exclusive, open and uninterrupted adverse possession under claim of title and have therefore a good and indefeasible title in fee simple to the land and are entitled to occupy and hold possession thereof.

It was alleged that certain persons, naming them, made some claim adverse to the complainants in the suit (appellants here), but what the nature and extent of their claim was complainants were unable to state. And it was alleged that there were certain unknown successors of the Fairview Town Company who made some claim of interest in and title to the land, but the nature and extent of the claim was unknown.

Then the following was alleged: "That your orators are credibly informed and believe that certain unknown persons, designated in this bill as 'Unknown Claimants of interest in the premises adverse to your orators' also make some claim of interest and title in and to the said tract of land adverse to the estate of your orators, but what the nature and extent of the said claim of said unknown persons in and to the said tract of land is, is likewise to your orators unknown."

It was finally alleged that all of the claims and pretenses of the defendants in the suit, known and unknown, adverse to the estate of complainants were of no avail against their title and constituted a cloud upon it. It was prayed that the title of complainants be established against all of the defendants and that it be forever quieted and set at rest, and process was prayed.

An affidavit for publication of process was filed in which it was recited among other things "that the place of residence is unknown and the whereabouts cannot be discovered of any and all of the defendants designated as unknown claimants of interests in the premises and lands

described in the bill of complaint, who claim adversely to the complainants, George E. Priest, Melvin W. Quick and Charles M. Benjamin."

Publication was made. There was no appearance on the part of any of the defendants, and the bill of complaint was ordered to be taken as confessed; and it was decreed that all of the defendants were brought before the court by proper process and that the court had jurisdiction of them, whether known or unknown, and jurisdiction of the subject-matter of the suit; that the land lay within the exterior boundaries of the Las Vegas grant, as described, was confirmed by Congress as alleged, and that in consequence of the grant and confirmation the land was segregated from the public domain and became and was the private property of the grantees and their privies. That the complainants in the suit and their grantors from whom they claimed and from whom they had deeds of conveyance were in the adverse possession of the land as alleged and that as a consequence thereof complainants were entitled to the relief for which they prayed. And it was decreed that the right, title and interest of complainants was an estate in fee simple absolute and that the same be established in them and that the defendants be barred and estopped from having or claiming or asserting any right, title, or interest whatsoever adverse to the complainants or any of them and that their title to the land, and each and every part thereof, be forever quieted and set at rest.

It will be observed that the title set up by appellants in the suit to quiet title and sustained by the decree depended upon adverse possession—in other words, upon the statute of limitations; and the trial court in the case at bar considered that aspect of the case and decree only and found that the statute did not begin to run until after the passage of the act of 1903 and the appointment of the board of trustees and that possession of appellants

and their predecessors in title for a period of ten years prior to the act and the appointment of the trustees could not ripen any title against appellees.

The court, therefore, adjudged that the decree in favor of appellants of September 15, 1894, quieting title in them was not binding upon appellees and the petition herein was dismissed.

The Supreme Court, however, considered this position untenable, saying that if "the court had jurisdiction, as against defendants, to render the decree of 1894, all the findings upon which that decree proceeds are likewise conclusive against it and it avails nothing to inquire, as did the trial court, into whether such findings were as a matter of fact properly made," p. 694. And the court said, "The whole question, therefore, is whether the proceedings of 1894 bind the present defendants," the board of trustees of the town of Las Vegas.

The court answered the question in the negative, basing the answer on the provisions of the laws of the Territory. Sections 4010 and 4011 of the Compiled Laws of 1897 [1] of the Territory, the court said, provide for an action to quiet title to real property and permit the complainant to make parties, "by their names as near as the same can be ascertained," those who claim an interest adverse to him, the unknown heirs of any deceased person who made claim in his lifetime "and all unknown persons who may claim any interest or title adverse to plaintiff, . . . unknown heirs by the style of unknown heirs of such deceased person, and said unknown person who may claim an interest or title adverse to plaintiff by the name and style of unknown claimants of interests in the premises adverse to the plaintiff, and service of process on, and notice of said suit against, defendants, shall be made in the same manner as now provided by law in other civil

[1] Identic reënactment of §§ 1, 2, c. 6, act of April 2, 1884.

suits," p. 695. Service by publication, the court said, is provided by § 2964 [1] and may be ordered upon a sworn pleading or affidavit "showing that the defendant, or any one or more of them in said cause, resides, or has gone out of the Territory, has concealed himself within it, has avoided service of process on him, or is in any other manner so situated that process cannot be served upon him or them, or that his or their names, or place of residence, is unknown, or that his or their whereabouts cannot be discovered," p. 696.

The provisions of these sections, appellants contended, were pursued by them in their suit to quiet title, and, after citing them, as we have said, and the allegations of the bill of complaint therein, the court considered the effect of the decree therein upon the board of trustees of the town of Las Vegas, appellees herein, and said, "The Board was not *eo nomine* a party, nor, indeed, was it in existence in 1894. Any effect of the decree upon it must, therefore, result from its holding under some party to the cause. That it does not hold under any of the individuals named is conceded. That it is not affected by the futile provision of the decree quieting title against 'any person whatsoever' is evident. The only remaining alternative is that it is bound because of the fact that 'all the unknown claimants of interests in the premises adverse to complainants,' are named in the complaint, were cited in the publication and were decreed against in the court's disposition of the case and that this was a binding adjudication against defendant under Compiled Laws, 4011, above quoted. But, in 1894, were the owners of the Las Vegas grant, whom defendant now represents, unknown owners? The complainants certainly knew the exact status of the matter, for their complaint, as we have seen, in terms alleged that the premises were a part of the Las Vegas grant 'on June 21, 1860, duly confirmed by Act of Congress of the United States to the Town of Las Vegas.'"

[1] Based on § 1, c. 16, act of January 2, 1879.

"The complainants thus knew that the Town of Las Vegas was the confirmee of the grant and that if complainants' title had, by adverse possession, been wrested from any one it was from such confirmee. Knowing this, we are of the opinion that it was their duty to have made the Town of Las Vegas a party, and that the term 'unknown owners' could not be utilized to divest title from what the Act of Congress, no less than plaintiffs' conceded knowledge, told them was the true ownership of the property," p. 697. The court commented upon the abuse which may be made of statutes providing for constructive service and the necessity to so construe them as "to hold that where the real owner may be brought into court by name his property may not be taken by an advertisement against unknown owners" and that where, "as in this case, the locus of the title is definitely declared of record and such is confessedly known to the complainant, it is but an exaction of good faith that the holder of such title should be summoned by name in order that he may appear and defend. To exact less is to open the doors wide to insidious attacks upon property rights, and, indeed, to ignore the statute, which in terms provides, (Comp. Laws, § 4011) that persons claiming interests 'may be made parties defendant by their names, as near as the same can be ascertained,'" p. 698.

To the contention that the designation of ownership of the Las Vegas grant as "unknown claimants" was justified because the Town of Las Vegas, as used in the act of confirmation, was a mere aggregation of people without corporate organization, and that the suit became one practically against the individuals residing on the grant and that as to these the designation of unknown owners was necessary and proper, the court said it was not impressed, nor by the other contention that there was no officer upon whom process could have been served, and replied to the first contention, as it said it was replied in

Maese v. *Herman*, 183 U. S. 572, that 'the town and its inhabitants were certainly substantial entities in fact and were recognized by Congress as having rights and directed such rights to be authenticated by a patent of the United States.' To the second contention the obvious answer was that under § 2964, *supra*, then in force, service by publication could have been made, "since in that event the defendant 'was so situated that process could not otherwise be served upon it,'" p. 699.

We have quoted thus at length from the opinion of the Supreme Court because necessarily the contention of appellants that the town was properly impleaded and properly served under the designation of "unknown claimants of interests" depends upon the local statutes, to the construction of which by the Supreme Court we have repeatedly decided we defer. In this case the deference is the more justified, if indeed it is not compelled, by the subsequent construction of the statutes in the same way by the Supreme Court of the State in *Rodriguez* v. *La Cueva Ranch Co.*, 134 Pac. Rep. 228, in which case § 3181 of the Compiled Laws of New Mexico was considered. By that section it is provided that in suits for partition all persons interested in the premises "whose names are unknown, may be made parties to such partition by the name and description of unknown owners or proprietors of the premises, or as unknown heirs of any person who may have been interested in the same." Persons who were in actual possession had not been made parties by name, and the question was whether they were made parties under the designation of "unknown owners." The question was determined in the negative, the court holding "that it was not the intention of the Legislature to provide for the making of parties by the name of unknown owners, and for the service of process upon them by publication, when they in fact were in the open and notorious adverse possession of a part of the

premises," p. 230. The court further said that the complainants in the suit had the means and it was their duty to ascertain the names of all persons actually holding adverse possession, and that it was not the intention of the legislature to allow the rights of claimants to land in such circumstances "to be foreclosed of their rights by a proceeding in which they are not named, and in which the only service obtained upon them was by publication," p. 230. The court cited the decision in the case at bar in support of its conclusion, saying, after noting certain differences which strengthened that decision, "In principle we can see no difference between the two cases. In that case the court was construing the statutes of the Territory in regard to proceedings to quiet title, which are in substance and effect the same as the partition statute in regard to proceedings against unknown owners, and held that such statutes must be strictly construed, and that the decree in that case was unavailing as against the town of Las Vegas," p. 230. Other cases were cited, among them being *American Land Co.* v. *Zeiss*, 219 U. S. 47. It is not necessary to review them as the construction of the court of the local statute is that it requires the parties defendant in an action to quiet title to be designated "by their names, as near as they can be ascertained" and permits parties defendant to be designated as "unknown claimants" only when their names cannot be ascertained. In other words, requires them to be unknown in fact, not merely in designation. Any other conclusion would make the statute not a facility for removing clouds from titles but for putting clouds upon them, and the accommodation of the law of its process to an exceptional condition could be perverted, and rights divested by a semblance of notice of adverse claims to them.

It is contended, however, that the distinction which the Supreme Court of the Territory made between the findings of the trial court in the proceedings of 1894, as to

jurisdiction, and findings as to other matters in issue is without foundation, and that "the question of the jurisdiction of the defendants through service by publication having been adjudicated in the decree of 1894" is conclusive "and not subject to attack in this collateral proceeding, whether as a matter of fact it was in issue or not." To sustain the contention *Thompson* v. *Thompson*, 226 U. S. 551, is cited. The case was concerned with the faith and credit to be given to a decree of divorce rendered upon service by publication. The publication was attacked because based on an affidavit made on information and belief, and it was hence contended that the court had not acquired jurisdiction. The contention was held untenable, the court saying that if the affidavit could be regarded as defective it was not in the omission to state a material fact but in the degree of proof, and that therefore the resulting judgment could not be said to be void on its face. The principle was declared, however, to be established that the full faith and credit clause and the statute enacted thereunder do not apply to judgments rendered by a court having no jurisdiction of the parties or subject-matter, or of the *res* in proceedings *in rem*.

The case at bar is, therefore, clearly distinct from that case. The Town of Las Vegas at the time of the institution of the suit to quiet title and of the publication of process was, whether regarded as an entity separate from its inhabitants or collectively as composed of them, either not intended to be made a party under the designation "unknown claimants of interest" or the designation was untrue.

But it is further contended that service by publication was not an issue in this case, the pleadings and the decision of the trial court being based upon the view "that the status of the town was such that no rights by limitation could be adjudicated against it, because of the impossibility of serving it with *legal process;*" and that the Supreme Court having found against appellants on that

contention there was nothing left but to reverse the judgment of the trial court and remand the cause with instructions to grant the writ prayed for. The Supreme Court could not, it was further contended, go outside of the record and of its own motion raise the issue as to the sufficiency of the service upon the defendants, that issue being in express language excluded by appellees from the court's consideration. The answer is immediate. We know of no rule which precludes an appellate court deciding a case for other reasons than those expressed by the trial court, and the contention that the sufficiency of the service was withdrawn from the consideration of the court by appellees is not justified. It is based upon the averment of the town that neither at the time of the confirmation of the grant nor at any time subsequent thereto did it have a representative upon whom legal process could have been served, until the ninth of December, 1902, when the board of trustees was appointed.

The Supreme Court dealt with the fact, and, as we have seen, ascribed a different effect to it than that ascribed by the trial court. The Supreme Court said, there being no officer of the town upon whom process could have been served, service by publication could have been made "since in that event the defendant 'was so situated that process could not otherwise be served upon it.'" But the court was of the view, as we have seen, that such fact did not authorize the town to be made defendant under the name of "unknown claimants" or cited as such by publication, and the town having been so named, the decree of 1894 was not binding upon it.

The next contention of appellants is that the inhabitants of the town and appellees are privies in estate and are bound by the decree quieting title. In other words, that there was such identity of interest between the defendants in the suit to quiet title and the present appellees, the board of trustees, that the latter is bound by the decree.

The argument is that the town was the mere representative of the inhabitants and that the non-appointment of some one to represent it "cannot operate to suspend either the institution or prosecution of legal proceedings against the trust estate or to discharge either the trust estate or the beneficiaries from the effect of the judgment rendered, when the latter have been made parties and served with legal process." In other words, if we understand the contention, it is that the proceedings of 1894, being against some of the inhabitants of the town, bind all of the other inhabitants, considered as an entity or collectively. We need not pause to consider the soundness of the contention. If justified at all, it would seem to make unnecessary the present petition. It puts out of view besides the effect of the confirmation to the town. We said, in *Maese* v. *Herman*, *supra*, "The town and its inhabitants were certainly substantial entities in fact, and were recognized by Congress as having rights, and directed such rights to be authenticated by a patent of the United States." The town was the confirmee and represented, it may be, individual interests, but collective interests as well. It was because of the grant to the town that the act of March 12, 1903, *supra*, was enacted giving the District Court of San Miguel County "jurisdiction to manage, control and administer" the grant. It was in the execution of this jurisdiction that the appellees, trustees of the town, were appointed and given the power to make conveyances to individuals if they had the character of title described.

But the town also had rights, and, as we have seen, by § 9 of the act of March 12, 1903, the trustees were given power "to lease, sell or mortgage any part or parts of the grant." See as to rights which towns had under the Mexican law, *United States* v. *Pico*, 5 Wall. 536; *Townsend* v. *Greeley*, 5 Wall. 326; *United States* v. *Santa Fe*, 165 U. S. 675.

Judgment affirmed.